

50-275/323

1 JAMES L. LOPES (No. 63678)
WILLIAM J. LAFFERTY (No. 120814)
2 JULIE B. LANDAU (No. 162038)
HOWARD, RICE, NEMEROVSKI, CANADY,
3 FALK & RABKIN
A Professional Corporation
4 Three Embarcadero Center, 7th Floor
San Francisco, California 94111-4065
5 Telephone: 415/434-1600
Facsimile: 415/217-5910

6 Attorneys for Debtor and Debtor in Possession
7 PACIFIC GAS AND ELECTRIC COMPANY

8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 In re
12 PACIFIC GAS AND ELECTRIC
13 COMPANY, a California corporation,
14 Debtor.

No. 01-30923 DM

Chapter 11 Case

Date: December 3, 2001
Time: 1:30 p.m.
Place: 235 Pine Street, 22nd Floor
San Francisco, California

15 Federal I.D. No. 94-0742640

16
17 NOTICE OF APPLICATION AND APPLICATION FOR AUTHORITY
18 TO EMPLOY REAL ESTATE APPRAISERS AND BROKERS, FOR
19 APPROVAL OF INTERIM PAYMENTS TO APPRAISERS AND
20 BROKERS WITHIN SPECIFIED PARAMETERS, AND FOR NUNC
PRO TUNC APPROVAL FOR EMPLOYMENT OF TERRA
PROPERTIES

21 [DECLARATION OF JULIE B. LANDAU ATTACHING
22 DECLARATIONS OF APPRAISERS AND BROKERS AND
DECLARATION OF TAMMIE CANDELARIO IN SUPPORT OF
APPLICATION FILED SEPARATELY]

23
24
25
26 *Foot add: Kids Ogc Mail Center*
27
28

HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN
A Professional Corporation

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

Page

NOTICE OF APPLICATION FOR AUTHORITY TO EMPLOY REAL ESTATE APPRAISERS AND BROKERS, FOR APPROVAL OF INTERIM PAYMENTS TO APPRAISERS AND BROKERS WITHIN SPECIFIED PARAMETERS, AND FOR NUNC PRO TUNC APPROVAL FOR EMPLOYMENT OF TERRA PROPERTIES	1
APPLICATION FOR AUTHORITY TO EMPLOY REAL ESTATE APPRAISERS AND BROKERS, FOR APPROVAL OF INTERIM PAYMENTS TO APPRAISERS AND BROKERS WITHIN SPECIFIED PARAMETERS, AND FOR NUNC PRO TUNC APPROVAL FOR EMPLOYMENT OF TERRA PROPERTIES	2
I. EMPLOYMENT OF REAL ESTATE PROFESSIONALS	2
A. PG&E's Business and Operations.	2
B. PG&E's Real Estate Professionals.	3
II. TERMS OF EMPLOYMENT	4
A. Appraisers.	4
B. Brokers.	6
III. APPROVAL AND PAYMENT OF REAL ESTATE PROFESSIONAL FEES	8
IV. PROFESSIONAL DISCLOSURE	10
V. EMPLOYMENT OF ADDITIONAL APPRAISERS AND BROKERS	10
VI. NUNC PRO TUNC APPROVAL FOR EMPLOYMENT OF TERRA PROPERTIES	11

HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN
A Professional Corporation

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page(s)

Cases

In re Gutterman, 239 B.R. 828 (Bankr. N.D. Cal. 1999) 11

In re That's Entertainment Marketing Group, Inc., 168 B.R. 226 (N.D. Cal. 1994) 5

In re THC Financial Corp., 837 F.2d 389 (9th Cir. 1988) 11

Statutes

Federal Rules of Bankruptcy Procedure

 Rule 2014 10

 Rule 2014(a) 2

Bankruptcy Code, 11 U.S.C.

 §327(a) 2, 10, 12

 §330 8

 §101(14) 10

 §1107 2

 §1108 2

HOWARD
RICE
NEMEROVSKI
CANADY
PAIK
& RABKIN
A Professional Corporation

1 An extra section break has been inserted above this paragraph. Do not delete this
2 section break if you plan to add text after the Table of Contents/Authorities. Deleting this
3 break will cause Table of Contents/Authorities headers and footers to appear on any pages
4 following the Table of Contents/Authorities.

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

HOWARD
RICE
NEMEROVSKI
CANADY
PALK
& RABKIN
A Professional Corporation

1 NOTICE OF APPLICATION FOR AUTHORITY TO EMPLOY REAL ESTATE
2 APPRAISERS AND BROKERS, FOR APPROVAL OF INTERIM PAYMENTS TO
3 APPRAISERS AND BROKERS WITHIN SPECIFIED PARAMETERS, AND FOR NUNC
4 PRO TUNC APPROVAL FOR EMPLOYMENT OF TERRA PROPERTIES

5 PLEASE TAKE NOTICE that a hearing will be held before the Honorable
6 Dennis Montali, at the United States Bankruptcy Court, 235 Pine Street, 22nd Floor, San
7 Francisco, California, on December 3, 2001 at 1:30 p.m. to consider the accompanying
8 Application for Authority to Employ Real Estate Appraisers and Brokers, for Approval of
9 Payments to Appraisers and Brokers Within Specified Parameters, and for Nunc Pro Tunc
10 Approval for Employment of Terra Properties (the "Application"), filed by Pacific Gas and
11 Electric Company ("PG&E"), debtor and debtor in possession in the within case.

12 In support of the Application, PG&E is filing and serving herewith the
13 Declaration of Tammie Candelario and the Declaration of Julie B. Landau, both of which
14 contain voluminous exhibits, which are not attached to the service copies of the
15 Declarations. You may obtain copies of the exhibits in one of the following ways: (i)
16 through the "Pacific Gas & Electric Company Chapter 11 Case" link accessible through the
17 Bankruptcy Court's website (www.canb.uscourts.gov), or (ii) by written request to Howard,
18 Rice, Nemerovski, Canady, Falk & Rabkin, Attention: Nathaniel Hunt, Three Embarcadero
19 Center, 7th Floor, San Francisco, California 94111-4065.

20 PLEASE TAKE FURTHER NOTICE that any party objecting to the Application
21 must file an objection with the Court and serve it on the undersigned counsel for PG&E at
22 least five (5) days prior to the scheduled hearing date.
23
24
25
26
27
28

1 APPLICATION FOR AUTHORITY TO EMPLOY REAL ESTATE APPRAISERS AND
2 BROKERS, FOR APPROVAL OF INTERIM PAYMENTS TO APPRAISERS AND
3 BROKERS WITHIN SPECIFIED PARAMETERS, AND FOR NUNC PRO TUNC
4 APPROVAL FOR EMPLOYMENT OF TERRA PROPERTIES

5 Pacific Gas and Electric Company, the debtor and debtor-in-possession in the
6 within Chapter 11 case ("PG&E"), hereby requests authority to employ the real estate
7 appraisers and brokers as described below, pursuant to Section 327(a) of the Bankruptcy
8 Code (the "Code") and Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the
9 "Bankruptcy Rules").

10 As more particularly set forth below, PG&E has historically employed numerous
11 real estate professionals in the course of regular business operations in order to facilitate
12 lease, purchase, and sale transactions and to advise PG&E on real estate strategy and
13 planning. The services of the real estate professionals are essential in the operation of a
14 large utility business.

15 This Application also seeks approval for the interim payment of the brokers' and
16 appraisers' fees to the extent such fees are within certain specified parameters, without
17 necessity of prior notice or order, but subject to final approval by the Court (except for
18 broker's sale commissions), as described in Paragraphs 15 and 16 below.

19 Finally, this Application also seeks approval for the employment of broker Terra
20 Properties, nunc pro tunc, as of the petition date.

21 I. EMPLOYMENT OF REAL ESTATE PROFESSIONALS

22 A. PG&E's Business and Operations.

23 1. PG&E filed a voluntary petition for relief under Chapter 11 of the
24 Bankruptcy Code on April 6, 2001. A trustee has not been appointed, and PG&E continues
25 to function as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Code.

26 2. PG&E is an investor-owned utility providing gas and electric services to
27 more than 4.5 million customers in Central and Northern California serving a total
28 population of about 13 million. PG&E employs over 19,000 people and has in excess of

1 30,000 trade creditors. See Declaration of Walter Campbell in Support of Debtor's
2 Emergency Motions, ¶2, filed on April 6, 2001.

3 3. To perform the functions required of a large utility providing power
4 generation and distribution services to millions of customers, PG&E maintains a large
5 portfolio of real estate assets. PG&E owns approximately 5,000 parcels of real estate and, as
6 a tenant, leases space in approximately 240 buildings in addition to a number of land leases.
7 Therefore, in the ordinary course of its business, PG&E regularly employs real estate
8 appraisers and brokers to assist PG&E on real estate matters, including: (1) leasing
9 transactions, (2) the purchase and sale of real estate, and (3) real estate strategy and
10 planning. See Declaration of Tammie Candelario in Support of Application ("Candelario
11 Declaration"); filed herewith, ¶2.¹

12
13 **B. PG&E's Real Estate Professionals.**

14 4. Appraisers. PG&E seeks to employ the appraisers (the "Appraisers") listed
15 on Exhibit A to the Candelario Declaration. Each of the Appraisers has submitted a
16 declaration, which are collectively attached as Exhibit A to the Declaration of Julie B.
17 Landau attaching Declarations of Appraisers and Brokers (the "Landau Declaration"), filed
18 herewith.

19 5. Brokers. PG&E seeks to employ the brokers (the "Brokers") listed on
20 Exhibit B to the Candelario Declaration. Each of the Brokers has submitted a declaration,
21 which are collectively attached as Exhibit B to the Landau Declaration.

22 6. PG&E is readily familiar with the professional capabilities of each of the
23 Appraisers and Brokers and believes that each is well-qualified to assist PG&E in
24 connection with ongoing real estate matters.

25
26
27 ¹All factual matter set forth herein is supported by the Candelario Declaration, unless
28 indicated otherwise.

1 II. TERMS OF EMPLOYMENT

2 A. Appraisers.

3 7. Appraiser Contracts. Subject to the approval of the Court, PG&E has
4 agreed or will agree to the employment of the Appraisers according to PG&E's standard
5 terms in place prior to commencement of this case. The standard form of contract utilized
6 for retention of appraisers is attached as Exhibit C to the Candelario Declaration (the
7 "Appraiser Contract"). The purpose of the Appraiser Contract is to specify the general terms
8 and conditions under which PG&E will hire an appraiser and to set limits on the appraiser's
9 fee, such as the hourly rate and a maximum contract value. When a particular project
10 necessitates employment of an appraiser, a Contract Work Authorization ("CWA") is signed
11 by the parties, authorizing the work and agreeing to the specific fee to be paid for that
12 project, subject to the general terms and conditions of the Appraiser Contract. The summary
13 provided on Exhibit A to the Candelario Declaration includes a description of the terms and
14 conditions of each Appraiser Contract that are variable, primarily the different hourly rates
15 charged by each Appraiser. Although the Appraisers have existing Appraiser Contracts in
16 place, PG&E has not actually employed any of the Appraisers post-petition, except on
17 acquisition matters as set forth in Paragraph 10 below. Furthermore, there are no
18 outstanding amounts due to any of the Appraisers.²

19 8. Appraisal Costs. The actual costs to PG&E for an appraisal are generally
20 determined by a number of factors including complexity of the assignment, type of report
21 needed and location of the property. These same factors generally determine which
22 appraiser would be chosen for a particular job. It is also typical for PG&E to request quotes
23 from two or more appraisers, who generally bid for the particular job on a "not to exceed"
24 basis. Because of its extensive experience in managing its real estate portfolio, PG&E has a
25 high-level of in-house expertise that permits it to monitor the validity and reasonableness of

26
27 ²The only exception is for appraiser Gary Vice, who has waived a pre-petition claim
28 against PG&E in the amount of \$2,400, as set forth in paragraph 6 of the Declaration of
Gary Vice, attached as Exhibit A-11 to the Landau Declaration.

1 appraisal fees and costs. In the vast majority of appraisals obtained by PG&E pre-petition,
2 PG&E has paid no more than \$10,000 per appraisal, which includes both the fee for
3 conducting the appraisal and any related costs incurred by the appraiser.

4 9. Appraiser Consulting Fees. PG&E also seeks to employ the Appraisers to
5 conduct valuation consulting services, such as determining the highest and best use for a
6 parcel of real estate, in situations where an appraisal is not needed. In such cases, the
7 Appraiser would be paid on an hourly basis at the agreed upon hourly rate. In connection
8 with appraiser-related consulting services conducted pre-petition, PG&E has paid varying
9 amounts, depending upon its real estate needs at any particular time, ranging up to \$20,000
10 per year. Currently, PG&E's expectation is that the reorganization effort will require
11 additional valuation consulting services as PG&E focuses on real estate disposition and
12 strategic planning, and PG&E estimates that such services will average \$5,000 per month in
13 hourly consulting fees for the Appraisers.

14 10. Appraisers as Expert Witnesses. PG&E is not seeking approval for the
15 employment of appraisers in connection with property acquisitions under the authority of In
16 re That's Entertainment Marketing Group, Inc., 168 B.R. 226 (N.D. Cal. 1994). As a brief
17 overview, in the course of PG&E's business as a government-regulated utility, all real
18 property (or in many cases, easements) to be acquired is treated as a potential condemnation
19 action in light of PG&E's power to condemn property. PG&E is required to hire an
20 appraiser to comply with the procedural requirements of the eminent domain law. Although
21 in many cases PG&E reaches an agreement with a landowner before a condemnation action
22 is actually filed, the appraiser is hired specifically to prepare an appraisal to be used in a
23 condemnation action. In addition, and under the same authority, one of PG&E's valuation
24 consultants is not included in this Application, as it is expected that this consultant's only
25 role will be to testify (i) before the CPUC regarding a property sale for which he completed
26 valuation work pre-petition, and (ii) in a condemnation action involving property for which
27 he also completed valuation work pre-petition.

1 B. Brokers.

2 11. Broker Consulting Contracts. PG&E seeks authority to employ the Brokers
3 listed on Exhibit B-1 to the Candelario Declaration ("Consulting Brokers") for consulting
4 services in addition to standard brokerage services. The standard form of contract utilized
5 for retention of brokers in connection with consulting services is attached as Exhibit D-1 and
6 D-2 to the Candelario Declaration (the "Broker Contract").³ As with the Appraiser Contract,
7 the purpose of the Broker Contract is to specify the general terms and conditions under
8 which PG&E will hire a broker and to set limits on the broker's fee, such as the hourly rate
9 and a maximum contract value. When a particular project necessitates employment of a
10 broker, a CWA is signed by the parties, authorizing the work and agreeing to the fee to be
11 paid for that project, subject to the general terms and conditions of the Broker Contract. For
12 each of the Consulting Brokers, the summary provided on Exhibit B-1 to the Candelario
13 Declaration includes a description of the terms and conditions of the Broker Contracts that
14 are variable, primarily the different hourly rates charged for consulting services. Although
15 the Consulting Brokers have existing Broker Contracts in place, PG&E has not actually
16 employed any of the Consulting Brokers post-petition and there are no outstanding amounts
17 due to any of the Consulting Brokers.

18 12. Exclusive Listing Agreements. PG&E also seeks to employ certain Brokers
19 solely for purposes of an exclusive listing to sell property. These Brokers are identified on
20 Exhibit B-2 to the Candelario Declaration (the "Listing Brokers") and are not expected to
21 perform any consulting services. Therefore, the Broker Contract summarized in Paragraph
22 11 above is not necessary. The form of Exclusive Listing Agreement to be used by PG&E
23 for the Listing Brokers is attached as Exhibit E to the Candelario Declaration.⁴ The only

24
25 ³As explained in more detail in Paragraph 10 of the Candelario Declaration, Exhibit D-
26 1 is an example of the general contract form used for the Consulting Brokers who have pre-
27 petition contracts, and Exhibit D-2 is an example of the general contract form used for the
28 Consulting Brokers who have recently (post-petition) executed a contract; the former
includes the terms of PG&E's exclusive listing agreement, while the latter does not.

⁴The Exclusive Listing Agreement would also be used for the Consulting Brokers in
the event they perform brokerage services.

1 Listing Broker currently under contract with PG&E is Terra Properties, which has two pre-
2 petition exclusive listing agreements with PG&E for properties that have not yet sold.
3 Further information about these agreements is set forth in Part VI below, which also includes
4 PG&E's request for nunc pro tunc approval for the employment of Terra Properties.

5 13. Broker Commissions. Historically, the commissions paid by PG&E for
6 property sales are negotiable based on the amount of time and expertise required to complete
7 the assignment and are calculated as a percentage of the sale price. Commissions paid by
8 PG&E pre-petition for sale transactions ranged from 3% to 10%, with the vast majority in
9 the 4% to 6% range. A 10% fee has typically been paid only for low value (\$50,000 or less)
10 rural property. In most other transactions, the highest fee PG&E has paid is 6%. PG&E
11 anticipates that most of its real estate transactions will consist of property sales. In the event
12 of a purchase, however, PG&E typically pays no broker's commission but may pay a broker
13 for hourly consulting services in connection with the transaction. Similarly, in lease
14 transactions, PG&E is typically the lessee and does not pay a broker's commission but may
15 pay a broker for hourly consulting services in connection with the transaction.

16 14. Broker Consulting Fees. PG&E seeks to employ the Consulting Brokers for
17 consulting services, such as when PG&E seeks market research in connection with real
18 estate strategy and planning or where PG&E will not be paying a commission but seeks
19 advice from a broker in connection with a transaction. In such cases, the broker is paid on
20 an hourly basis at the agreed upon hourly rate. In connection with broker-related consulting
21 services conducted pre-petition, PG&E has paid varying amounts, depending upon its real
22 estate needs at any particular time, ranging up to \$50,000 per year. Currently, PG&E's
23 expectation is that the reorganization effort will require additional broker consulting services
24 as PG&E focuses on real estate disposition and strategic planning, and PG&E estimates that
25 such services will average \$15,000 per month in hourly consulting fees for the Brokers.

1 III. APPROVAL AND PAYMENT OF REAL ESTATE PROFESSIONAL FEES

2 15. Final Allowance of Fees. Except for commissions paid to Brokers
3 hereunder, all fees and expenses of the Appraisers and Brokers will be subject to final
4 allowance by order of the Court at the conclusion of the case ("Final Order"), upon filing of
5 an appropriate application for compensation and reimbursement of expenses in accordance
6 with Section 330 of the Code, the Court's Guidelines for Compensation and Expense
7 Reimbursement of Professionals (to the extent applicable to appraisers and brokers), and any
8 other applicable rules or orders. Notwithstanding the foregoing, PG&E requests authority to
9 pay all fees on a current basis in accordance with the terms and procedures set forth in
10 Paragraph 16 below.

11 16. Approval of Interim Payment of Fees. Brokers are typically paid at the
12 closing of a lease or sale transaction and appraisers are typically paid in full upon receipt of
13 the completed appraisal report. Consulting fees are typically paid on a monthly basis based
14 on invoices submitted. Accordingly, PG&E requests authority to pay the Appraisers and
15 Brokers for the fees and expenses incurred under the following procedures:

16 (a) Appraisal Fees. The Order approving this Application will constitute
17 approval for the interim payment (subject to Final Order) by PG&E of all fees incurred by
18 Appraisers to the extent such fees do not exceed a total of \$10,000 per appraisal (inclusive of
19 any reimbursable expenses);

20 (b) Broker Commissions. The Order approving this Application will
21 constitute final approval (without any further notice or order) of payment by PG&E of all
22 fees incurred by the Brokers to the extent such fees consist of broker commissions and do
23 not exceed: (i) 10% of the sale price for rural property with a value of \$50,000 or less; or (ii)
24 6% of the sale price for all other property.⁵

25 ⁵Pursuant to the Order Granting PG&E's Motion for Authority (1) to Sell (Free and
26 Clear of a Specified Lien), Donate, Lease, License or Otherwise Encumber Its Real and
27 Personal Property, etc., entered on October 15, 2001, PG&E anticipates that many of its real
28 property sales will not be subject to Court approval. Therefore, although broker's fees
would ordinarily be approved as part of a sale approval motion, PG&E is seeking approval
of the Brokers' fees pursuant to the procedures set forth in this Application.

1 (c) Consulting Fees. The Order approving this Application will constitute
2 approval for the interim payment (subject to Final Order) by PG&E of: (i) the Appraisers'
3 hourly consulting fees to the extent such fees, in total, do not exceed \$5,000 per month
4 (inclusive of any related reimbursable expenses); and (ii) the Brokers' hourly consulting fees
5 to the extent such fees, in total, do not exceed \$15,000 per month (inclusive of any related
6 reimbursable expenses), without prior notice or order.

7 (d) Excess Fees. If the fees and expenses are in excess of the amounts set
8 forth in the preceding subparagraphs 16(a), (b) and (c) (the "Excess Fees"), then PG&E shall
9 provide written notice (the "Notice") to the Office of the United States Trustee ("UST") and
10 to counsel for the Official Committee of Unsecured Creditors (the "Committee"), either in
11 advance of the employment of an Appraiser or Broker for the project at issue or upon receipt
12 of an invoice or statement from an Appraiser or Broker; provided, however, that PG&E shall
13 be authorized to pay all amounts that are within the parameters set forth in subparagraphs
14 16(a), (b) and (c) above. If neither the UST nor the Committee provide PG&E with a
15 written objection to the Excess Fees within seven (7) days of delivery of the Notice, then
16 PG&E shall be authorized to pay the Excess Fees when due and payable. In the event that
17 the UST or the Committee timely object, and such objection is not resolved consensually,
18 then counsel for PG&E shall obtain a hearing date on such objection as promptly as the
19 Court's calendar permits.

20 17. Real Estate Professional Fees Report. PG&E shall, no less frequently than
21 every one hundred twenty (120) days, provide the Committee and the UST with a Report of
22 Real Estate Professional Fees Incurred By and Paid to Appraisers and Brokers (the
23 "Report"), which shall contain the following information: (a) the amount of fees incurred by
24 and paid to each Appraiser and Broker for the period commencing one hundred fifty (150)
25 days prior to the date of the Report and concluding thirty (30) days prior to the date of the
26 Report (the "Reporting Period"), and (b) a brief description of the services rendered by each
27 Appraiser and Broker during the Reporting Period.

1 this Application to request authority to employ additional appraisers and brokers.

2
3 VI. NUNC PRO TUNC APPROVAL FOR EMPLOYMENT OF TERRA PROPERTIES

4 22. Nature of Services Performed. Terra Properties ("Terra") has been
5 marketing two properties for PG&E pursuant to two pre-petition exclusive listing
6 agreements (the "Listing Agreements"):

7 (a) The first listing agreement was entered into on January 14, 2000, as
8 currently extended to December 31, 2001, and involves property located in Redding,
9 California on Court Street (the "Court Street Property"). This property consists of 4.3 acres
10 of vacant property with improvements that require replacement and is to be sold for
11 approximately \$700,000. No buyer was found for this property pre-petition. In August
12 2001, a potential buyer began negotiations to purchase the property but no final agreement
13 has been reached.

14 (b) The second listing agreement was entered into on January 24, 2001,
15 with an expiration date of December 31, 2001, and involves property located in Redding,
16 California on Viking Way (the "Viking Way Property"). This property consists of 30 acres
17 of vacant land to be sold for approximately \$180,000. No buyer was found for this property
18 pre-petition, nor are there any offers currently pending.

19 23. Standard for Nunc Pro Tunc Approval. The standard for determining
20 whether to grant a nunc pro tunc employment application is "extraordinary circumstances."
21 In re Gutterman, 239 B.R. 828, 830 (Bankr. N.D. Cal. 1999) (citing In re THC Financial
22 Corp., 837 F.2d 389, 392 (9th Cir. 1988)). "This standard consists of two prongs:
23 (1) whether the applicant has satisfactorily explained its failure to apply for court approval of
24 its employment on a timely basis and (2) whether the applicant's services have benefited the
25 estate." Gutterman, 239 B.R. at 830. It is within the court's discretion to grant or deny a
26 nunc pro tunc application. Id. at 831.

27 24. Nunc Pro Tunc Approval is Appropriate under the Circumstances.

28 (a) Explanation for Failure to Apply for Court Approval. PG&E did not

1 notify Terra of the requirement to be employed under Section 327(a) of the Code before this
2 Application was prepared as it mistakenly believed that only brokers doing work
3 prospectively required Court approval. PG&E was focused on the fact that new (post-
4 petition) employment agreements required Court approval and therefore overlooked Terra's
5 unique position. Terra was the only broker who "straddled" the petition date, in effect, by
6 continuing to provide services under the pre-petition Listing Agreements since no buyers
7 had been found for the Court Street and Viking Way Properties as of the petition date. Part
8 of the confusion arose because there are other PG&E brokers with pre-petition exclusive
9 listing agreements who are not being employed as estate professionals – this latter group of
10 brokers hold pre-petition commission claims based on sale agreements entered into pre-
11 petition and therefore do not satisfy the "disinterested" standard under Section 327(a) of the
12 Code. Given the complexities of this case and the number of brokers being employed by
13 PG&E, the necessity of obtaining approval for Terra's employment was simply overlooked
14 for all of the foregoing reasons.


15 (b) Benefit to Estate. Terra's post-petition services have benefited the
16 estate by continuing to expose these difficult-to-sell properties to the market. Although there
17 is no sale agreement at this time, there is a potential buyer on the Court Street Property.
18 Both the Court Street and the Viking Way Properties require substantial and prolonged
19 marketing efforts due to their isolated locations and local market conditions. At this time,
20 Terra is not owed any commissions and there is therefore no risk that substantial fees have
21 accrued during the post-petition period without the Court's oversight.⁶

22
23
24
25 ⁶The commissions agreed to under the Listing Agreements are slightly higher than the
26 pre-approved limits requested by PG&E pursuant to this Application. However, both Listing
27 Agreements expire on December 31, 2001 and PG&E has not decided whether to extend the
28 agreements. As a result, PG&E is not hereby requesting approval for the Excess Fees and
acknowledges that, assuming this Application is approved, any Excess Fees to be paid to
Terra under the Listing Agreements would require approval pursuant to the procedures set
forth in Paragraph 16 above.

1 WHEREFORE, PG&E respectfully requests that it be authorized to employ and
2 pay the Appraisers and Brokers on the terms and conditions set forth in this Application, and
3 that it be authorized to employ Terra Properties nunc pro tunc as of April 6, 2001.

4 DATED: November 7, 2001

Respectfully,
HOWARD, RICE, NEMEROVSKI, CANADY,
FALK & RABKIN
A Professional Corporation

By: 
JULIE B. LANDAU
Attorneys for Debtor and Debtor in Possession
PACIFIC GAS AND ELECTRIC COMPANY

HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN
A Professional Corporation

28

WD 110701/2-1419904/Y7/932796/v4