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14 UNITED STATES BANKRUPTCY COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION

17 In re
18 PACIFIC GAS AND ELECTRIC COMPANY,
19 a California corporation,

20 Debtor.

21 Federal I.D. No. 94-0742640

Case No. 01-30923 DM

Chapter 11 Case

Date: [To Be Set]
Time: [To be Set]
Place: 235 Pine Street, 22nd Floor,
San Francisco, California

22 **CALIFORNIA PUBLIC UTILITIES COMMISSION'S NOTICE OF
23 MOTION, MOTION AND SUPPORTING MEMORANDUM OF POINTS
24 AND AUTHORITIES FOR AN ORDER REQUIRING THE DEBTOR TO (1) PAY
25 ALL AMOUNTS PAYABLE TO UBS WARBURG LLC, AS ARRANGER OF THE
26 FINANCING REQUIRED UNDER THE COMMISSION'S PLAN OF
27 REORGANIZATION FOR THE DEBTOR, AND (2) PROVIDE FINANCIAL AND
28 OTHER INFORMATION AND DUE DILIGENCE ACCESS TO UBS WARBURG LLC**

[SUPPORTING DECLARATIONS OF WESLEY M. FRANKLIN,
SKIP VICTOR AND KENNETH S. CREWS ATTACHED]

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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that, on such date and at such time as ordered by the Court pursuant to its Order granting the application of the California Public Utilities Commission (the "Commission") for an order shortening the time for a hearing on this Motion (the "Scheduling Order"), in the Courtroom of the Honorable Dennis Montali, located at 235 Pine Street, 22nd Floor, San Francisco, California, the Commission, will and hereby does move the Court (the "Motion") for entry of an Order requiring the Debtor (1) to pay all amounts payable to UBS Warburg LLC, as arranger of the financing required under the Commission's plan of reorganization for the Debtor, dated May 17, 2002, and (2) to provide financial and other information and due diligence access to UBS Warburg LLC.

This Motion is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, sections 105(a), 363(b), 364, 503(b) and 1107(a) of the Bankruptcy Code, the declarations of Messrs. Wesley M. Franklin, Skip Victor and Kenneth S. Crews filed concurrently herewith, the record of this case and any evidence presented at or before the hearing on this Motion.

PLEASE TAKE FURTHER NOTICE that pursuant to the Scheduling Order, any written opposition to the Motion and the relief requested herein must be filed with the Court and served upon appropriate parties (including counsel for the Commission, the Office of the United States Trustee and the Official Committee of Unsecured Creditors) in accordance with the Scheduling Order. If there is no timely objection to the requested relief, the Court may enter an order granting such relief without further hearing.

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MEMORANDUM OF POINTS AND AUTHORITIES

16 The California Public Utilities Commission (the "Commission"), by and through its
17 undersigned counsel, hereby moves this Court for entry of an order pursuant to sections 105(a),
18 363(b), 364, 503(b) and 1107(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*
19 (the "Bankruptcy Code") requiring Pacific Gas & Electric Company ("PG&E" or the "Debtor")
20 (i) to pay all amounts payable to UBS Warburg LLC ("UBS Warburg"), in connection with its
21 engagement as financing and capital markets arranger of the financing required under the
22 Commission's Plan of Reorganization for PG&E, dated May 17, 2002 (the "Commission's
23 Plan"), on the terms and conditions set forth in that certain engagement letter between the
24 Commission and UBS Warburg, dated as of June 10, 2002 (together with all exhibits thereto, the
25 "Engagement Letter") (a copy of which is attached hereto as Exhibit A); and (ii) to provide
26 financial and other information to UBS Warburg for use by UBS Warburg in arranging for the
27 financing required under the Commission's Plan. In support of this Motion, the Commission
28 represents as follows:¹

I. INTRODUCTION

On March 11, 2002, this Court terminated PG&E's exclusive right to file a plan of reorganization to allow the Commission to file a competing plan. This Court, concerned with possible delay and in the interest of moving the plan process along on a dual track, ordered the Commission to file its competing plan and accompanying disclosure statement by April 15, 2002. The Commission filed its Plan and Disclosure Statement (as amended, the "Commission's Disclosure Statement") on such date. After hearings on May 9 and 15, 2002, the Court approved the Commission's Disclosure Statement and authorized the Commission and PG&E to distribute their respective plans to voters by June 17, 2002 in a single solicitation package.

¹ This Motion and Supporting Memorandum of Points and Authorities has been filed in furtherance of the Commission's Plan. By filing this Motion, the Commission does not waive any objections or defenses that it or any other agency, unit, or entity of the State of California may have to this Court's jurisdiction over the Commission or such other agency, unit or entity based upon the Eleventh Amendment or related principles of sovereign immunity or otherwise, all of which are hereby reserved.

1 Meanwhile, PG&E has been on a spending spree in connection with its proposed plan of
2 reorganization (“PG&E’s Plan”), which is premised on a disaggregation of the Debtor’s business
3 into four parts. Specifically, PG&E has moved this Court for authority to incur millions of
4 dollars in plan-related expenses for such things as Benefit Program Expenses [Docket No. 6238],
5 Permits and Franchises [Docket No. 6048], Communications-Related Expenses [Docket No.
6 6310], and Land-Related Expenses [Docket No. 5985]. In addition, PG&E has pending before
7 this Court similar motions to incur plan-related expenses in respect of, among other things,
8 Human Resource Management System Expenses, Data Management Expenses, Additional
9 Expenses Related to Permits and Information Technology-Related Expenses (together with the
10 motions referenced in the preceding sentence and all other such motions, collectively, the “Plan
11 Implementation Motions”). The Commission has not opposed PG&E’s Plan Implementation
12 Motions.

13 Since November 2001, PG&E also has been spending millions of dollars seeking FERC,
14 NRC and SEC approval for certain of the transactions envisioned by its disaggregation strategy.
15 These plan-related expenses have also been paid from PG&E’s estate through, among other
16 means, the interim compensation procedures established in this case for the various professionals
17 employed by PG&E.

18 The Commission too has taken steps to implement its Plan, focusing its efforts on
19 securing the necessary financing. The Court will recall that the Commission’s Plan relies, in
20 part, upon PG&E’s issuance of approximately \$3.86 billion of new debt securities and \$1.75
21 billion of new equity securities, and PG&E’s entry into a \$1.9 billion exit financing facility. *See*
22 *Commission’s Plan at 62-63.*

23 To arrange for the various contemplated financings, the Commission has engaged UBS
24 Warburg, a member of the UBS Group, and a leading provider of investment banking and capital
25 markets services in the global utilities and power sectors. For reasons described more fully
26 below, the Commission cannot pay for UBS Warburg’s services. By this Motion, the
27 Commission seeks an order of the Court directing PG&E to pay the fees and expenses provided
28

1 in the Engagement Letter so that UBS Warburg can provide services vital to implementation of
2 the Commission's Plan. Such relief is required without delay so that the competing plans remain
3 on the dual track envisioned by this Court when it terminated PG&E's plan exclusivity.²

4 II. PRELIMINARY STATEMENT

5 This Court's approval of the Commission's Disclosure Statement vindicates the Court's
6 wisdom of eliminating PG&E's plan monopoly. Creditors now have a choice. Each plan,
7 though not issue free, offers creditors payment in full with interest. One can hardly imagine a
8 better result for creditors in this case.

9 Each plan, however, must overcome certain confirmation hurdles. One of the most
10 significant hurdles for PG&E is its planned disaggregation into four separate entities in violation
11 of multiple state and local laws and regulations. *See e.g., Report and Recommendations*
12 *Regarding Competing Plans of Reorganization for Pacific Gas & Electric Company* (the
13 "Committee Report") at 3. With respect to the Commission's Plan, some have raised feasibility
14 concerns – *i.e.*, can PG&E secure the financing necessary for it to emerge from chapter 11 under
15 the Commission's Plan. *Id.* at 8-9.

16 In addition, each of the plan proponents must demonstrate that it can satisfy numerous
17 preconditions to implementation of its respective plan. For instance, PG&E must obtain a
18 variety of regulatory approvals from the FERC, NRC and SEC to pursue its disaggregation
19 scheme. In addition, PG&E must address the substantial logistical issues raised by its planned
20 split up. To be able to demonstrate at the confirmation hearing that these prerequisites can be
21 satisfied, PG&E has already commenced implementation pursuits that will cost the Debtor
22 millions of dollars, a significant amount of which has already been spent. As noted above,

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24
25 ² As described more fully below, by this Motion the Commission also requests an order
26 requiring PG&E to establish at its own expense a "data room" for use by UBS Warburg in
27 connection with the services to be performed under the Engagement Letter, to respond to
28 "due diligence" requests by UBS Warburg and to provide UBS Warburg access to PG&E's
executives and employees so that UBS Warburg can complete its assignment under the
Engagement Letter.

1 PG&E, through its filed Plan Implementation Motions will incur approximately \$28 million in
2 plan-related expenses, and there can be no assurance that PG&E will stop there.³

3 The Commission too must take certain steps in advance of confirmation to facilitate
4 implementation of the Commission's Plan and to ensure PG&E's prompt emergence from
5 chapter 11 thereunder. To that end, the Commission has engaged UBS Warburg to act as the
6 Commission's financing and capital markets arranger in connection with debt and equity
7 financing required under the Commission's Plan. Given the lead time necessary for UBS
8 Warburg to raise the financing required under the Commission's Plan, it is imperative to ensure
9 timely creditor recoveries and PG&E's prompt emergence from chapter 11 that UBS Warburg
10 begin working immediately.

11 As discussed more fully below and in the declaration of Wesley M. Franklin, Executive
12 Director of the Commission (the "Franklin Decl.," a copy of which is attached hereto as
13 Exhibit B), the Commission, a State agency that receives its funding from the California
14 Legislature, simply cannot pay UBS Warburg. Yet, because PG&E's estate and its creditors are
15 the intended beneficiaries of UBS Warburg's work, it is appropriate for the estate to bear the cost
16 of such work. Accordingly, the Commission now seeks payment as and when due of all amounts
17 payable to UBS Warburg under the Engagement Letter from the Debtor's estate.

18 There is ample legal authority supporting the Commission's requested relief. *First*, the
19 payment of all amounts owed to UBS Warburg should be authorized as an appropriate use of
20 estate property outside the ordinary course of the Debtor's business pursuant to section 363(b) of
21 the Bankruptcy Code. As the Supreme Court has recently noted, lifting exclusivity to allow
22 competing plans is akin to putting a company up for auction in the market place. *See Bank of*
23 *Am. Nat'l. Trust & Savings Ass'n. v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 456 (1999).

24
25 ³ At a minimum, PG&E will incur significant litigation expenses in contested proceedings
26 before the FERC, NRC and SEC to obtain the various regulatory approvals upon which its
27 Plan depends. In addition, PG&E has indicated that it intends to file additional Plan
28 Implementation Motions, which could increase the aggregate amount to be spent pursuant to
the Plan Implementation Motions to at least approximately \$50 million.

1 In this case, the question is whether the Debtor will be recapitalized by means of a
2 disaggregation of its operations and the issuance of securities to its existing creditors and
3 shareholders (under the PG&E Plan) or as a stand-alone entity through the issuance of securities
4 to new creditors and owners (through the financings contemplated by the Commission's Plan).
5 In this context, the estate and parties in interest derive substantial benefit from completion of the
6 steps necessary to make the Commission's Plan a viable, confirmable alternative to PG&E's
7 Plan. If, as the Commission believes, PG&E's Plan is legally flawed and therefore not
8 confirmable, the ability to implement promptly the Commission's Plan will be critical to the
9 recoveries of parties in interest in this case. In addition, the competition created by a viable
10 Commission Plan may be the only incentive for a consensual resolution of this case. Thus, Court
11 authorization for the Debtor's use of estate funds pursuant to section 363(b) to pay UBS
12 Warburg is warranted.

13 Alternatively, payment is appropriate under sections 503(b)(1)(A) and 503(b)(3)(D) of
14 the Bankruptcy Code, which award administrative priority status to claimants for providing a
15 benefit to the debtor's estate or for making a substantial contribution to the debtor's
16 reorganization. Here, there can be little doubt that the Commission's plan-related efforts have
17 contributed, and will continue to contribute, mightily to PG&E's reorganization. This is true
18 regardless of whether the Commission's Plan is ultimately confirmed. Its mere existence has
19 caused PG&E to improve upon its own Plan and, as noted above, keeps alive the possibility of a
20 consensual plan, both of which significantly benefit PG&E's estate and its creditors. Moreover,
21 the Commission's Plan may be critical to PG&E's prompt emergence from chapter 11 due to the
22 possibility that PG&E's Plan will not be confirmed because it is illegal. UBS Warburg's
23 financing activities further the Commission's cause and, as a result, qualify UBS Warburg's fees
24 and expenses as administrative expense claims under sections 503(b)(1)(A) and 503(b)(3)(D).⁴

25
26 ⁴ Pursuant to Article 11.8 of the Commission's Plan, the Commission reserves the right to seek
27 payment and/or reimbursement of other plan-related expenses in addition to the amounts
28 sought herein. See Commission's Plan at 73.

1 Moreover, because it is appropriate to order the payment of all amounts owed to UBS
2 Warburg in connection with its engagement, such amounts constitute postpetition extensions of
3 unsecured credit to PG&E under section 364(b) of the Bankruptcy Code. As such, they are
4 compensable as administrative expense claims pursuant to sections 364(b) and 503(b)(1) of the
5 Bankruptcy Code.

6 Finally, even if the amounts payable to UBS Warburg do not fit neatly into one of the
7 enumerated administrative expense claim categories contained in section 503(b), this Court may
8 authorize payment of such amounts in recognition of the Commission's and UBS Warburg's
9 contribution to PG&E's reorganization and creditor recoveries and the unique circumstances of
10 this case. Section 503(b) does not limit the universe of administrative expense claims to those
11 specifically enumerated therein. Instead, room is left for consideration of the unique
12 circumstances presented herein. Like the expense reimbursement and break-up fee agreements
13 so often approved by courts to facilitate asset sales by chapter 11 debtors, the amounts incurred
14 for the services to be provided by UBS Warburg benefit the debtor's estate and its creditors.
15 Accordingly, such amounts should be accorded administrative expense priority under section
16 503(b).

17 Section 503 of the Bankruptcy Code governs the "allowance" of administrative expense
18 claims only, and does not address the timing for payment of such claims. Nevertheless, ample
19 authority exists under the Bankruptcy Code and case law to authorize the timely payment of
20 amounts payable to UBS Warburg in accordance with the terms of the Engagement Letter.
21 These claims must be paid regardless of which Plan is confirmed; section 1129(a)(9)(A) of the
22 Bankruptcy Code requires as much. It is critical to the Commission's Plan prospects that UBS
23 Warburg commence its engagement now. This requires UBS Warburg to be paid currently on a
24 going forward basis beginning now. It would be a terrible result if the Commission's Plan and
25 the competing plan process which this Court has spent months engineering were to falter because
26 such work did not go forward. PG&E, an admittedly solvent debtor, has the money to pay UBS
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1 Warburg without diminishing creditor recoveries; it can and should bear the cost of the
2 competing plan process.

3 For these reasons, the Commission respectfully requests that this Court authorize
4 PG&E's payment of UBS Warburg's fees and expenses pursuant to the Engagement Letter.

5 The Commission similarly requests a Court order requiring PG&E to provide financial
6 and other information reasonably required by UBS Warburg in connection with the services to be
7 performed by UBS Warburg under the Engagement Letter. UBS Warburg currently does not
8 have access to PG&E's books and records and the other due diligence materials it will need to
9 structure and market the debt and equity securities and bank financing required under the
10 Commission's Plan.⁵ The Commission expects at a minimum that UBS Warburg will ask PG&E
11 to establish and maintain a "data room" at its own expense containing the detailed financial and
12 other information, including forward-looking information, that is normally provided to lenders
13 and underwriters. In addition, UBS Warburg will want reasonable access to PG&E's executives
14 and other employees to ask questions, test assumptions and generally become comfortable with
15 PG&E's financial condition, results of operations and prospects. The Commission requests that
16 the Court require PG&E's cooperation in this area in its broadest sense to assure the integrity of
17 any securities offering or other financing. The Commission anticipates that the cost to PG&E of
18 complying with this request would be minimal. Yet, PG&E's compliance is critical to the
19 Commission's ability to raise the financing required under its Plan.

20 III. BACKGROUND

21 A. About UBS Warburg.

22 UBS Warburg is a member of the UBS Group, a global, integrated investment services
23 firm with over 70,000 employees worldwide and approximately 1,500 offices in 50 countries.
24 Crews Decl. at ¶ 2.⁶ As one of the preeminent investment banking and financial advisory firms

25 ⁵ The Commission's previous requests of PG&E to establish a "data room" at PG&E's
26 expense have proven unsuccessful. Victor Decl. at ¶ 10.

27 ⁶ Refers to the Declaration of Kenneth S. Crews (the "Crews Decl."), a copy of which is
28 attached hereto as Exhibit C.

1 in the world, UBS Warburg is an industry leader in the fields of investment banking, mergers and
2 acquisition, corporate restructuring and debt and equity capital markets. *Id.* at ¶ 3.

3 Among its strengths, is UBS Warburg's expertise in the areas of utilities, global power
4 and energy. Crews Decl. at ¶ 6. UBS Warburg's Global Power Group consists of forty-eight
5 professionals in six countries with particular expertise in debt underwritings and mergers and
6 acquisitions. *Id.* at ¶ 7. A leader in utility and power debt underwriting, UBS Warburg ranked 4th
7 globally from 1998 to 2001 with over 300 transactions representing in excess of US\$140 billion
8 in issuances. *Id.* Recent UBS Warburg transactions include acting as a bookrunner or lead-
9 manager for the following transactions: US\$1.0 billion for Duke Energy Corp., US\$1.35 billion
10 and US\$1.7 billion for DTE Energy Company, US\$700 million for SCANA Corp., US\$1.0
11 billion for American Electric Power Company, Inc., and US\$1.1 billion for The Williams
12 Companies, Inc. *Id.*

13 In addition to its energy and power sector expertise, UBS Warburg is a leader in financial
14 restructurings and distressed finance. Crews Decl. at ¶ 10. UBS Warburg has extensive
15 experience in assisting troubled companies to raise financing. *Id.* With a restructuring staff of
16 thirty-six professionals, UBS Warburg considers itself one of the few, if not the only, major full-
17 service securities firms with a major restructuring practice. *Id.* Since the late 1980's, UBS
18 Warburg professionals have participated in over 125 financial restructurings involving
19 approximately \$120 billion in debt securities. *Id.* In addition, professionals in UBS Warburg's
20 restructuring group have extensive experience in consent solicitations, exchange offers, debt-
21 tender offers, debt financings and refinancings, rights offerings, chapter 11 reorganizations and
22 international reorganizations. *Id.* Recent completed transactions include (i) Telesystems
23 International Wireless, Inc., in which UBS Warburg completed a \$547 million high yield
24 exchange offer and a \$776 million recapitalization, (ii) Advantica Restaurant Group, Inc., in
25 which UBS Warburg served as a dealer manager in an exchange offer for a portion of the
26 Company's \$530 million in outstanding senior notes and (iii) Genesis Health Ventures, Inc. with
27 \$1.7 billion in indebtedness. *Id.*

1 For the engagement described herein, UBS Warburg has assembled an inter-disciplinary
2 team of individuals from its Global Energy and Power, Restructuring, Strategic Advisory, Fixed
3 Income Capital Markets and Equity Capital Markets Groups. UBS Warburg's team is committed
4 to commencing work immediately to develop a detailed financing plan and to attempt to raise the
5 financing required under the Commission's Plan in accordance with the time frames set forth
6 therein and required by this Court's confirmation schedule.

7 **B. The UBS Engagement Letter.**⁷

8 **1. Scope of Services**

9 Pursuant to the Engagement Letter, UBS Warburg will act as financing and capital
10 markets arranger for the Commission. In such capacity, UBS Warburg will provide such
11 financial and market-related advice and assistance (the "Financing Services") with respect to the
12 financing of a chapter 11 plan of reorganization⁸ as may be appropriate and mutually agreed
13 upon by the Commission and UBS Warburg. Specifically, pursuant to Section 1 of the
14 Engagement Letter, such Financing Services may include, but are not limited to, the following:

15 (i) assisting the Commission in analyzing, structuring, negotiating and
16 effecting any financing by PG&E of a plan of reorganization; and

17 (ii) providing or arranging for any financing in connection with any
18 plan of reorganization of which the Commission is the proponent.

19 Engagement Letter at Sec.1, ¶ 3.

20
21 ⁷ The following summary of the Engagement Letter's terms and conditions is for descriptive
22 purposes only. In the event of a conflict between the summary provided herein and the
23 Engagement Letter, the terms of the Engagement Letter shall control. Capitalized terms used
24 as part of this summary but not otherwise defined herein shall have the meanings ascribed to
25 them in the Engagement Letter.

26 ⁸ Pursuant to the Engagement Letter, the phrase "financing of a chapter 11 plan of
27 reorganization" means, whether effected directly or indirectly in one or a series of
28 transactions, the consummation by PG&E (or its affiliated entities or subsidiaries, whether
now existing or newly created) of a bank financing or the issuance and/or sale of debt or
equity securities in the public or private markets or otherwise (including the issuance or sale
of such securities to PG&E's existing creditors or interest holders), for the purpose of
providing financing or funding to effect the terms of a confirmed plan of reorganization of
PG&E. See Engagement Letter at Sec. 1, ¶ 2.

1 The Engagement Letter does not constitute a commitment by UBS Warburg to
2 underwrite, place or purchase any securities or to arrange any other form of financing. Such a
3 commitment, if any, shall be set forth in a separate underwriting, placement, agency or similar
4 agreement relating to the financing, which shall contain fee arrangements and other terms and
5 conditions, including appropriate indemnification provisions, satisfactory to UBS Warburg. See
6 Engagement Letter at Sec. 1, ¶ 5.

7 **2. Compensation**

8 Section 2 of the Engagement Letter provides for UBS Warburg to be paid in stages, as
9 certain work is performed and completed. Specifically, UBS Warburg would be compensated as
10 follows:

11 (a) Retainer Fees: Retainer fees would be payable in four parts (collectively,
12 the "Retainer Fees") as follows:

13 (i) \$3,000,000 promptly upon the effectiveness of the Engagement
14 Letter to compensate UBS Warburg for commencing work on the engagement,⁹

15 (ii) an additional \$2,500,000 promptly upon the delivery to the
16 Commission of a written proposal by UBS Warburg to provide or arrange for the
17 financing of a chapter 11 plan of reorganization, which shall be based on reasonably
18 detailed assumptions regarding market conditions, rate path and financial performance of
19 reorganized PG&E and include reasonably detailed term sheets describing the terms of
20 each class and series of debt and equity securities to be issued and sold in public or
21 private transactions;

22 (iii) an additional \$2,500,000 promptly upon the earlier to occur of
23 (x) the 45th day following the delivery to the Commission of the written proposal
24 described in (ii) above or (y) the acceptance for use by the Commission of a revised or
25 final written proposal by UBS Warburg to provide or arrange for the financing of a
26 chapter 11 plan of reorganization (which shall be evidenced, among other things, by the
27 reference to such proposal as its proposal or financing plan by the Commission or its
28 representatives in public statements or in written communications with PG&E, the
Bankruptcy Court or any committee of creditors or interest holders, or in any filing with
the Bankruptcy Court); and

⁹ Pursuant to the Engagement Letter, it shall become effective when the Court enters an order
satisfactory in form and substance to UBS Warburg providing for the payment by PG&E of
all amounts payable to UBS Warburg arising out of or relating to the Engagement Letter
(including without limitation, the related indemnification), and such order shall have become
effective on or prior to July 10, 2002, unless extended by UBS Warburg in its sole discretion,
and shall not be stayed. Engagement Letter at Sec. 2(c), ¶ 4.

1 (iv) commencing in March 2003, a monthly fee of \$150,000, payable
on the first day of each month or portion thereof during the Term.¹⁰

2 Engagement Letter at Sec. 2(a).

3 (b) Commitment Fees

4 In addition to the Retainer Fees described above, if the Commission (or PG&E, as
5 the case may be) requests a financing commitment(s) from UBS Warburg to provide or arrange
6 for all or any portion of the financing of a chapter 11 plan of reorganization, then UBS Warburg
7 shall be entitled to receive a commitment fee(s) (collectively, the "Commitment Fees").

8 Pursuant to the Engagement Letter, the Commitment Fees shall be payable promptly upon UBS
9 Warburg's delivery to the Commission (or PG&E, as the case may be) prior to the effective date
10 of a chapter 11 plan of reorganization of a binding commitment(s), subject to terms and
11 conditions normally included in such arrangements in similar contexts. The Commitment Fees
12 shall be equal to a percentage of the financing committed in accordance with the formula set
13 forth below:

14

Funds Committed	Fee Percentage
Senior Debt (including bank financing)	1%
Subordinated Debt	2%
Convertible Securities	2%
Public or Private Equity	4%

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20 Engagement Letter at Sec. 2(b).

21 The Engagement Letter provides that a separate Commitment Fee shall be payable in
22 respect of each financing in the event that the relevant commitments contemplate multiple
23 financings, but only one fee shall be payable for multiple transactions relating to the same capital
24 raising event (e.g., debt raised in an offering pursuant to Rule 144A promulgated under the
25

26 ¹⁰ As set forth in the Commission's Disclosure Statement, the Commission anticipates that
27 PG&E will emerge from chapter 11 under the Commission's Plan in January 2003, prior to
28 incurrence of such monthly fees.

1 Securities Act of 1933, as amended, following which a registration statement is filed covering
2 resales of the same or underlying securities). See Engagement Letter at Sec. 2(b).

3 (c) Consummation Fee

4 Finally, at the time of the occurrence of a Consummation Transaction (as defined
5 below) with respect to PG&E, UBS Warburg shall receive a fee (the "Consummation Fee")
6 equal to \$60 million, minus up to \$60 million of the following:

7 (i) the cumulative Commitment Fees previously paid to UBS
8 Warburg; and

9 (ii) the portion of any underwriting commissions retained by UBS
10 Warburg in its capacity as lead manager or co-manager of any underwritten financing in
11 connection with such Consummation Transaction for acting in such capacity.

12 Engagement Letter at Sec. 2(c). For purposes of the Engagement Letter, a "Consummation
13 Transaction" means the consummation of any reorganization or restructuring of liabilities of
14 PG&E that is in material compliance with California law, including, without limitation, the
15 earliest to occur of (i) the effective date of any chapter 11 plan of reorganization with respect to
16 PG&E, or (ii) any repayment, exchange, conversion, modification, amendment, deferral,
17 restructuring, rescheduling, moratorium or adjustment of the terms and/or conditions of liabilities
18 of PG&E outstanding on the date of commencement of PG&E's chapter 11 proceedings, whether
19 pursuant to a chapter 11 plan of reorganization, order of the Bankruptcy Court or otherwise. A
20 Consummation Transaction of the type referred to in clause (ii) above shall be deemed to have
21 occurred when the plan of reorganization or other binding document or agreement providing for
22 such Consummation Transaction becomes effective.¹¹ Engagement Letter at Sec. 2(c), ¶ 2.

23 Whether or not any financing transaction is consummated, in addition to any fees payable
24 to UBS Warburg, the Engagement Letter calls for PG&E to reimburse UBS Warburg, promptly
25 upon its request from time to time, for its reasonable expenses incurred in entering into and

26 ¹¹ Pursuant to the Engagement Letter, a Consummation Transaction shall not include any plan
27 of reorganization that results in the disaggregation of PG&E into separate business entities
28 with the effect of substantially removing from the Commission its authority under current
law to regulate the rates of any one or more such separate entities. *Id.*

1 performing services pursuant to the Engagement Letter, including the reasonable fees,
2 disbursements and other charges of its legal counsel. See Engagement Letter at Sec. 2(c), ¶ 3.

3 **3. Other Material Provisions**

4 (a) Indemnification

5 As is customary in connection with the arrangement and execution of financing
6 transactions, see Victor Decl. at ¶ 9,¹² pursuant to Section 10 of the Engagement Letter (and a
7 separate Indemnification Agreement attached as Exhibit A to the Engagement Letter and
8 incorporated therein by reference), the Commission is required to indemnify (the
9 “Indemnification”) UBS Warburg from and against any losses, claims, damages, liabilities and
10 expenses in connection with any matter in any way relating to or referred to in the Engagement
11 Letter except to the extent it shall be determined by a court of competent jurisdiction that such
12 losses, claims, damages, liabilities and expenses resulted solely from the gross negligence or
13 willful misconduct of UBS Warburg. In addition, the Indemnification Agreement provides that
14 if such Indemnification were not available for any reason, then

15 the CPUC agrees to contribute to the losses, claims, damages,
16 liabilities and expenses involved (i) in the proportion appropriate
17 to reflect the relative benefits received or sought to be received by
18 the CPUC, Pacific Gas & Electric Company and its subsidiaries
19 and affiliates (“PG&E”) and other constituencies, on the one hand,
20 and UBS Warburg, on the other hand, in the matters contemplated
21 by the Agreement or (ii) if (but only if and to the extent) the
22 allocation provided for in clause (i) is for any reason held
23 unenforceable, in such proportion as is appropriate to reflect not
24 only the relative benefits referred to in clause (i) but also the
25 relative fault of the CPUC, PG&E and other constituencies, on the
26 one hand, and the party entitled to contribution, on the other hand,
27 as well as any other relevant equitable considerations.

22 Engagement Letter, Exhibit A.

23 In Section 10 of the Engagement Letter, the Commission agrees that UBS Warburg (and
24 its affiliates, directors, employees and controlling persons) shall not be liable to the Commission,
25 and releases UBS Warburg and such persons from any losses or liability in connection with or as

26 _____
27 ¹² Refers to the Declaration of Skip Victor (the “Victor Decl.”), a copy of which is attached
28 hereto as Exhibit D.

1 a result of its engagement, except if a court finally determines that such losses or liability
2 resulted solely from (i) nonperformance by UBS Warburg of its services under the Engagement
3 Letter or (ii) gross negligence or willful misconduct by UBS Warburg. Except for the
4 enforcement of rights or claims described in (i) or (ii) above, the Commission covenants that it
5 will not sue or bring any claim against UBS Warburg. Engagement Letter at Sec. 10, ¶ 2.

6 For the reasons described below, the Commission is unable to make payments to UBS
7 Warburg under the indemnification provisions. Accordingly, although the Commission has
8 agreed to indemnify UBS Warburg, the Indemnification Agreement provides that the
9 Commission shall have no obligation or liability for any amount payable to UBS Warburg
10 arising out of the Indemnification Agreement. All such amounts shall be payable solely by
11 PG&E. Exhibit Letter, Exhibit A.

12 The Commission understands from its financial advisors, Chanin Capital Partners LLC
13 (“Chanin”), that an indemnification agreement similar to that entered into between the
14 Commission and UBS Warburg will be an integral part of any engagement with a financing
15 arranger, primarily because the arranger will have to rely on information supplied by PG&E in
16 its discussions with potential financing sources. Victor Decl. at ¶ 9. It is usual and customary
17 for underwriters and arrangers to be protected against damage they suffer resulting from their
18 detrimental reliance on such information. *Id.* Accordingly, the Commission believes that it is
19 appropriate for PG&E to provide such protection in order to permit the Commission to engage
20 UBS Warburg as arranger for the financings contemplated by the Commission’s Plan.

21 (b) Information

22 For UBS Warburg to properly advise the Commission in respect of the debt and
23 equity issuances required under the Commission’s Plan, UBS Warburg will require detailed
24 financial and other information about PG&E and full access to knowledgeable PG&E executives
25 and employees. Crews Decl. at ¶ 11. Accordingly, Section 4 of the Engagement Letter obligates
26 the Commission to furnish UBS Warburg (and to request that PG&E furnish UBS Warburg) with
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1 such information as UBS Warburg believes appropriate for its assignment. *See* Engagement
2 Letter at Sec. 4.

3 (c) Termination

4 Pursuant to Section 5 of the Engagement Letter, UBS Warburg's services may be
5 terminated by the Commission or UBS Warburg upon thirty (30) days prior written notice
6 without liability or continuing obligation of the Commission or UBS Warburg, with the
7 following exceptions:

8 (i) if terminated by the Commission, UBS Warburg shall be entitled
9 to the fees payable pursuant to Section 2 of the Engagement Letter in respect of any
10 chapter 11 plan of reorganization of PG&E consummated within a period of thirty-six
(36) months following any such termination;

11 (ii) the expenses incurred by UBS Warburg as a result of services
12 rendered prior to the date of the termination by either party shall become immediately
payable in full by PG&E; and

13 (iii) certain specified provisions of the Engagement Letter shall remain
operative and in full force and effect regardless of any termination by either party.

14 Engagement Letter at Sec. 5.

15 **C. The Commission's Negotiations Leading Up to the Engagement Letter.**

16 In the months leading up to the filing of this Motion, the Commission participated in
17 meetings and negotiations with various financing sources. Before agreeing to the Engagement
18 Letter with UBS Warburg, the Commission met with other global banking and financial
19 institutions and investors who expressed various levels of interest in raising the financing
20 required under the Commission's Plan. Victor Decl. at ¶ 5. Specifically, the Commission
21 received indications of interest to underwrite PG&E's entire capital structure under the
22 Commission's Plan from one other global banking institution and an indication of interest from a
23 global equity player to arrange for the equity financing required under the Commission's Plan.
24 *Id.* In addition, the Commission received multiple indications of interest in investing in both the
25 debt and equity components of the Commission's Plan. *Id.* Of those who indicated interest, the
26 Commission proceeded to the detailed term sheet phase with UBS Warburg and one other
27 financing source, and decided upon UBS Warburg because of its size and experience, expertise
28

1 in the global power and energy industry, degree of commitment to the Commission's Plan and
2 world-class reputation. *Id.* at ¶ 6.

3 The Engagement Letter is the product of extensive arms'-length negotiations between the
4 Commission and UBS Warburg. Victor Decl. at ¶ 7. The Commission believes that the fee,
5 expense and indemnification provisions contained therein are reasonable and customary for
6 comparable financings. The Commission's belief is informed, in large part, by the advice of its
7 financial advisors, Chanin. Chanin has reviewed and is familiar with comparable financings
8 involving other large investment banks and believes that UBS Warburg's fee and expense
9 provisions reflect the market for the services to be provided by UBS Warburg. *Id.* at ¶ 8. In
10 addition, Chanin has advised the Commission that the indemnification requested by UBS
11 Warburg is standard and likely would be required by any investment bank hired by the
12 Commission. *Id.* at ¶ 9.

13 IV. ARGUMENT

14 The Bankruptcy Code permits a debtor in possession, like PG&E, to use property of its
15 estate other than in the ordinary course of business with court approval.¹³ Additionally, the
16 Bankruptcy Code accords priority status to certain costs of administration incurred by the debtor
17 in a bankruptcy case. 11 U.S.C. § 507(a)(1) (accord[ing] first priority status to "administrative
18 expenses allowed under section 503(b) of this title"). Specifically, the Bankruptcy Code
19 identifies in section 503(b) six categories of administrative expense claims entitled to a first
20 priority under section 507(a)(1) of the Bankruptcy Code.¹⁴ The six categories of administrative

21 ¹³ 11 U.S.C. § 363(b)(1) ("The trustee, after notice and a hearing, may use, sell, or lease, other
22 than in the ordinary course of business, property of the estate.").

23 ¹⁴ Section 503(b) of the Bankruptcy Code provides, in relevant part, that:

24 (b) After notice and a hearing, there shall be allowed administrative expenses, other than
25 claims allowed under section 502(f) of this title, *including*—

26 (1)(A) the actual, necessary costs and expenses of preserving the estate . . . ;

27 (B) any tax . . . ;

28 (C) any fine, penalty, or reduction in credit relating to a tax of a kind specified in

1 expenses in section 503(b) of the Bankruptcy Code are not exhaustive. *See In re Megafood*
2 *Stores, Inc.*, 163 F.3d 1063, 1071 (9th Cir. 1998); *see also 4 Collier on Bankruptcy* at
3 ¶ 503.05[1].

4 For reasons discussed more fully below, payment by PG&E of the amounts payable to
5 UBS Warburg in accordance with the terms of the Engagement Letter should be directed by this
6 Court and such amounts should constitute administrative expense claims against the Debtor's
7 estate. *First*, it is beyond dispute that the Commission, by proposing and now seeking to
8 implement its Plan, is providing a significant benefit to PG&E, its estate and its creditors. As
9 noted above, the competing plan process is in effect an auction that will accelerate the ultimate
10 distributions in this case and thereby enhance the value received by the parties in interest herein.
11 Payment to UBS Warburg for its role in raising the financing required under the Commission's
12 Plan is an entirely appropriate use of property of the Debtor's estate under section 363(b) of the
13 Bankruptcy Code, and the Court, which may prescribe conditions on the rights of the debtor in
14 possession pursuant to sections 1107 and 105 of the Bankruptcy Code, should direct the Debtor
15 to make such payments.

16
17 _____
18 subparagraph (B) of this paragraph;

19 (2) compensation and reimbursement awarded under section 330(a) of this title;

20 (3) the actual, necessary expenses, other than compensation and reimbursement specified
21 in paragraph (4) of this subsection, incurred by —

22 (D) a creditor . . . in making a substantial contribution in a case under chapter 9 or 11
23 of this title;

24 (4) reasonable compensation for professional services rendered by an attorney or an
25 accountant of an entity whose expense is allowable under paragraph (3) of this
26 subsection . . .;

27 (5) reasonable compensation for services rendered by an indenture trustee in making a
28 substantial contribution in a case under chapter 9 or 11 of this title . . .; and

(6) the fees and mileage payable under chapter 119 of title 28.

11 U.S.C. § 503(b) (emphasis added).

1 *Second*, as a corollary to the above, amounts owed to UBS Warburg under the
2 Engagement Letter should be compensable as administrative expense claims. UBS Warburg's
3 financing efforts are in furtherance of and enhance the competing plan "auction" and the
4 Debtor's reorganization prospects. Like expense reimbursement and break-up fees payable in a
5 competitive bidding environment, the amounts payable to UBS Warburg under the Engagement
6 Letter should be deemed to qualify as administrative expense claims pursuant to section
7 503(b)(1)(A).

8 In addition, in view of the benefits accruing to PG&E's estate from UBS Warburg's
9 efforts, section 503(b)(1)(A) provides an alternative and independent ground for allowance and
10 payment of UBS Warburg's fees and expenses. Similarly, UBS Warburg should be entitled to
11 have its fees and expenses allowed as a "substantial contribution" claim pursuant to section
12 503(b)(3)(D) of the Bankruptcy Code. And, in any event, even if UBS Warburg's fee and
13 expense claims do not fit neatly into one or both of the foregoing categories of administrative
14 expense claims, the Commission requests that the Court direct PG&E to make such payments
15 and find that UBS Warburg's fee and expense claims qualify for administrative priority based
16 upon (i) the nature and extent of the benefit to be provided by UBS Warburg to PG&E, its estate
17 and its creditors, (ii) the flexibility accorded this Court by section 503(b) of the Bankruptcy Code
18 and the Ninth Circuit's holding in *In re Megafood Stores, Inc.* to extend section 503(b)'s
19 applicability beyond its six enumerated categories of administrative expenses and (iii) the unique
20 circumstances of this case and the competing plan process.

21 *Finally*, any work to be performed by UBS Warburg for which it remains unpaid for any
22 length of time should be viewed to constitute an extension of unsecured credit to PG&E, which
23 would entitle UBS Warburg, at a minimum, to an administrative priority claim for such unpaid
24 amount(s) in accordance with sections 364(b) and 503(b) of the Bankruptcy Code.

1 **A. Sections 363(b) and 1107 of the Bankruptcy Code**
2 **Authorize the Court to Direct PG&E to Pay All Amounts**
3 **Owed to UBS Warburg Pursuant to the Engagement Letter.**

4 Payment of UBS Warburg's fees and expenses constitutes a prudent and necessary use of
5 estate assets. As noted above, section 363(b)(1) of the Bankruptcy Code provides, in relevant
6 part, that "the trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary
7 course of business, property of the estate." 11 U.S.C. § 363(b)(1). In addition, section 1107 of
8 the Bankruptcy Code provides, in relevant part, that subject "to such limitations or conditions as
9 the court prescribes, a debtor in possession shall have all the rights. . . , and powers, and shall
10 perform all the functions and duties . . . of a trustee serving in a case under this chapter."
11 11 U.S.C. § 1107.

12 In determining whether to authorize a transaction under section 363(b)(1) of the
13 Bankruptcy Code, courts require a debtor in possession to show that a sound business purpose
14 justifies such action, applying the business judgment rule. *See, e.g., Stephens Indus., Inc. v.*
15 *McClung*, 789 F.2d 386, 389-90 (6th Cir. 1986) (sound business purpose for sale of assets
16 pursuant to section 363(b) existed where trustee was unable to operate radio station at profit).
17 *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir.
18 1983) (holding that bankruptcy court must make finding on the record that debtor has sound
19 business reason for sale of assets pursuant to section 363(b)).

20 This Court should authorize and direct PG&E's payment of amounts payable to UBS
21 Warburg under the Engagement Letter. As discussed by the Supreme Court in *LaSalle*, a
22 competing plan process is essentially an auction that seeks to maximize the value of the debtor's
23 estate by exposing it to the "market's scrutiny." 526 U.S. at 456. That is precisely the situation
24 here, where PG&E will be reorganized in accordance with the provisions set forth either in the
25 Commission's Plan or PG&E's Plan. The continued viability of the competing plan process is
26 dependent, at least in part, on the Commission's ability to take certain steps necessary to
27 implement its Plan. The timing and, ultimately, the value of creditor recoveries will be a
28 function of the viability of the Commission's Plan.

1 Like expense reimbursements and break-up fees payable from a debtor's estate in the
2 bankruptcy sale context, amounts payable to UBS Warburg under the Engagement Letter are
3 direct expenses of maximizing PG&E's reorganization chances and, thus, the value of its
4 estate.¹⁵ As discussed more fully below, PG&E's estate and parties in interest will benefit
5 substantially from the Commission's completion of steps necessary to implement its Plan. For
6 one thing, creditors benefit from their present ability to choose between the two Plans. If, as the
7 Commission believes, PG&E's Plan is illegal and therefore not confirmable, the ability of the
8 Commission to confirm and then implement its Plan promptly will prove critical to PG&E's
9 reorganization and creditor recoveries in this case. In addition, the competition engendered by a
10 viable Commission Plan may provide the only impetus for a consensual plan in this case, which
11 undoubtedly would result in a savings of time, money and scarce judicial and other resources.

12 Like it or not, as the debtor in possession, PG&E is fiducially obligated to maximize the
13 value of its estate and its reorganization chances, even if the result is one which it disfavors. An
14 element of PG&E's fiduciary responsibility is to use estate assets for purposes other than its own
15 to further its reorganization cause. Here, prudent business judgment would dictate payment of
16 UBS Warburg's fees and expenses from estate assets. If the Commission's Plan is going to be
17 hamstrung at this early stage because of PG&E's reluctance to expend funds in furtherance of its
18 own reorganization then this Court must order it to do so. *See Cmty. Nat'l. Bank and Trust Co.*
19 *v. Persky (In re Persky)*, 893 F.2d 15, 18 (2d. Cir. 1989) (holding that a creditor has standing to
20 compel a debtor to sell property pursuant to section 363(h) of the Bankruptcy Code; "Because a

21
22 ¹⁵ Some courts have applied the business judgment rule to determine whether to authorize a
23 debtor's payment of a break-up fee under section 363(b). *See, e.g., In re 995 Fifth Ave.*
24 *Associates, Ltd. P'ship*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989); *In re Integrated Res., Inc.*,
25 147 B.R. 650, 658-61 (S.D.N.Y. 1992). Other courts have applied a more stringent "benefit
26 to the estate" test. *See, e.g., Calpine Corp. v. O'Brien Envtl. Energy, Inc. (In re O'Brien*
27 *Envtl. Energy, Inc.)*, 181 F.3d 527, 535 (3d Cir. 1999) (holding award of break-up fees
analyzed under traditional section 503(b) jurisprudence); *see also, In re Am. West Airlines,*
Inc., 166 B.R. 908, 912 (Bankr. D. Az. 1994) ("The standard is not whether a break-up fee is
within the business judgment of the debtor, but whether the transaction will 'further the
diverse interests of the debtor, creditors, and equity holders, alike.'"), citing *In re Lionel*
Corp., 722 F.2d at 1071. As demonstrated in Section IV(B) below, the relief requested
herein satisfies even the heightened "benefit to the estate" standard.

1 trustee is always subject to the supervision of the bankruptcy court, it may not chart a course of
2 action or inaction the court finds inimical to the best interests of the creditors.”); *see also*
3 11 U.S.C. §§ 105(a), 363(b), 1107.

4 **B. UBS Warburg’s Fees and Expenses Constitute Administrative**
5 **Expense Claims Under Section 503(b) of the Bankruptcy Code.**

6 **1. UBS Warburg’s Fees and Expenses Constitute Actual and Necessary**
7 **Expenses Allowable Under Section 503(b)(1)(A) of the Bankruptcy Code**

8 As a corollary to the above, the amounts to be paid to UBS Warburg by PG&E should be
9 deemed compensable as administrative expense claims of PG&E’s estate in that such amounts
10 would be incurred in furtherance of the competing plan auction. As noted above, break-up fees
11 and other auction-related expenses incurred by bidders frequently are allowed as administrative
12 expense claims pursuant to section 503(b)(1)(A) of the Bankruptcy Code. Because the amounts
13 payable to UBS Warburg under the Engagement Letter would further and enhance PG&E’s
14 reorganization chances and, thus, creditor recoveries, such amounts are similarly allowable as
15 administrative expense claims.

16 In addition, section 503(b)(1)(A) of the Bankruptcy Code provides an alternative and
17 independent ground for directing PG&E to pay all amounts owed to UBS Warburg. That section
18 provides, in relevant part, that there shall be allowed as administrative expenses “the actual,
19 necessary costs and expenses of preserving the estate” 11 U.S.C. § 503(b)(1)(A). In the
20 Ninth Circuit, a claimant must demonstrate that its asserted administrative expense claim: “(1)
21 arose from a transaction with the debtor-in-possession as opposed to the preceding entity (or,
22 alternatively, that the claimant gave consideration to the debtor-in-possession); and (2) directly
23 and substantially benefited the estate.” *In re Megafood Stores, Inc.*, 163 F.3d at 1071-72; *DAK*
24 *Indus., Inc. v. Microsoft Corp. (In re DAK Indus., Inc.)*, 66 F.3d 1091, 1094 (9th Cir. 1995)
25 (same). “The bankruptcy court has broad discretion to determine whether to grant such a claim.”
26 *Id.* Moreover, courts have noted that the phrase “preserving the estate” should not be interpreted
27 narrowly. *See Elsom v. Woodward & Lothrop, Inc.*, 1997 WL 476091 at *3 (E.D. Pa. Aug. 14,
28 1997) (“Section 503(b)(1)(A) has been broadly interpreted to include ‘actual, necessary costs and

1 expenses' that benefit the debtor's estate both directly and indirectly."); *First Va. Bank of*
2 *Tidewater v. Va. Builders, Inc. (In re Va. Builders, Inc.)*, 153 B.R. 729, 733 (Bankr. E.D. Va.
3 1993) ("Courts have consistently construed the language of §503(b)(1)(A) broadly."); 4 *Collier*
4 *on Bankruptcy* at ¶503.06[1].¹⁶

5 The "benefit" prong of the Ninth Circuit's test for allowance of UBS Warburg's fees and
6 expenses under section 503(b)(1)(A) clearly is satisfied. Advancement of the Commission's
7 Plan provides a clear and direct benefit to PG&E, its estate and its creditors, and UBS Warburg's
8 role in advancing the Commission's Plan is critical. Creditors need to know whether the
9 financing required under the Commission's Plan is achievable. The only way for them to be
10 certain is if UBS Warburg can begin structuring the debt and equity instruments to be issued
11 under the Commission's Plan and soliciting indications of interest and, eventually, commitments
12 to provide such financing.

13 Once it is confirmed that the Commission's Plan is financeable, the Commission believes
14 that creditors will prefer the Commission's Plan over PG&E's Plan and that the Commission's
15 Plan is the more likely of the two to be confirmed.¹⁷ In addition, continued viability of the
16 Commission's Plan, at a minimum, provides creditors with a viable alternative to PG&E's
17 drastic deregulation plan and offers hope for a consensual plan in this case. Of course, if the
18 Commission's Plan ultimately is confirmed, then the financing secured and/or provided by UBS
19 Warburg will directly and exclusively benefit PG&E, its estate and its creditors.

20 ¹⁶ In urging this broad construction of "preserving the estate," *Collier's* notes that:

21 The actual and necessary expenses of the trustee in operating the business of the estate,
22 for the storage of property, for rent, and for other goods and services incidental to
23 protecting, conserving, maintaining, and rehabilitating the estate are certainly
contemplated within the phrase "actual, necessary costs and expenses of preserving the
estate."

24 4 *Collier on Bankruptcy* at ¶ 503.06[1].

25 ¹⁷ As the Committee Report indicates, "[although] the CPUC Plan presently faces uncertainties
26 over its financial feasibility, . . . [it] otherwise faces fewer legal and regulatory hurdles than
27 the PG&E Plan. Thus, it appears that the CPUC Plan could be consummated more quickly."
Committee Report at 13-14. The Committee also notes that "the CPUC Plan thus offers a
28 simpler approach to the reorganization of PG&E." *Id.* at 8.

1 The "transaction-with-the-debtor" prong of the Ninth Circuit's test is similarly satisfied.
2 That prong is designed to ensure that the "transaction" is with the debtor, as debtor in possession,
3 or with the trustee, and not with the prepetition debtor. See *DAK Indus. Inc.*, 66 F.3d at 1094
4 (noting that the claim "arose from a transaction with the debtor in possession as opposed to the
5 preceding entity"). Here, the relief sought is that PG&E be directed, for the benefit of its estate
6 and its creditors, to pay UBS Warburg, as arranger of the financed portion of the Commission's
7 Plan funding. The entire premise of the Motion is that UBS Warburg's efforts would benefit
8 PG&E in its capacity as debtor in possession. It is without question that PG&E's chapter 11
9 estate will be the beneficiary of UBS Warburg's fund raising efforts.

10 For these reasons, the obligations to UBS Warburg under the Engagement Letter,
11 including those under the Indemnification Agreement, should be accorded administrative
12 expense priority under section 503(b)(1)(A) of the Bankruptcy Code.

13 **2. Allowance of UBS Warburg's Fees and Expenses as Administrative**
14 **Expense Claims is Warranted Under Section 503(b)(3)(D)**

15 Section 503(b)(3)(D) of the Bankruptcy Code provides an alternative basis for allowing
16 amounts payable to UBS Warburg under the Engagement Letter as administrative expense
17 claims. That section provides, in relevant part, that there shall be allowed the actual and
18 necessary expenses "incurred by—a creditor. . .in making a substantial contribution in a case
19 under chapter 9 or 11 of this title." 11 U.S.C. § 503(b)(3)(D). Although not defined in the
20 Bankruptcy Code, the phrase "substantial contribution" has been defined by courts to mean:

21 Services. . .which foster and enhance, rather than retard or interrupt
22 the progress of reorganization. . . . Those services which are
23 provided solely for the client-as-creditor, such as those services
24 rendered in prosecuting a creditor's claim, are not compensable.
[Compensable services] are those which facilitated the progress of
25 these cases. . . .

24 *In re Paolino*, 71 B.R. 576, 579-80 (Bankr. E.D. Pa. 1987), quoted in *In re Catalina Spa & R.V.*
25 *Resort, Ltd.*, 97 B.R. 13, 17 (Bankr. S.D. Cal. 1989).¹⁸ In addition, the legislative history
26 supporting the 1978 Bankruptcy Reform Act instructs that

27 _____
28 ¹⁸ A creditor's general or administrative participation in a case, without more, does not qualify

1 The phrase 'substantial contribution in the case' is derived from
2 Bankruptcy Act §§ 242 and 243 . . . [and] does not require a
3 contribution that leads to confirmation of a plan, for in many cases,
it will be a substantial contribution if the person involved uncovers
facts that would lead to a denial of confirmation, such as fraud in
connection with the case.

4 H.R. Rep. No. 95-595, 95th Cong., 1st. Sess. 355 (1977), reprinted in 1978 U.S.C.A.A.N. 5787,
5 6311.

6 A determination of "substantial contribution" is fact-based and is to be made on a case by
7 case basis. See *In re 9085 E. Mineral Office Bldg., Ltd.*, 119 B.R. 246, 249 (Bankr. D. Colo.
8 1990). "[T]he policy aim of authorizing fee awards to creditors is to promote meaningful
9 creditor participation in the reorganization process." *In re Consol. Bancshares, Inc.*, 785 F.2d
10 1249, 1253 (5th Cir. 1986) (internal quotations and citations omitted); see also, *In re Granite*
11 *Partners, Ltd. P'ship.*, 213 B.R. 440, 445 (Bankr. S.D.N.Y. 1997) (same); *In re Catalina Spa*, 97
12 B.R. at 16-17 (same). In determining whether a creditor has made a substantial contribution, the
13 subjective motive of the creditor is immaterial. See *In re Celotex Corp.*, 227 F.3d 1336, 1338-39
14 (11th Cir. 2000) ("Examining a creditor's intent unnecessarily complicates the analysis of
15 whether a contribution of considerable value or worth has been made."); *Hall. Fin. Group v.*
16 *D.P. Partners Ltd. P'ship (In re D.P. Partners Ltd. P'ship)* 106 F.3d 667, 673 (5th Cir. 1997)
17 (commenting that "nothing in the Bankruptcy Code requires a self-deprecating, altruistic intent
18 as a prerequisite to recovery of fees and expenses under section 503.")¹⁹

19 Here, the Commission, by proposing and now seeking to implement its Plan,
20 unquestionably has made a substantial contribution to this case. The Commission's efforts to
21 date have resulted in massive revisions to PG&E's Plan (including deletion of PG&E's flawed
22 theory of express preemption upon which PG&E's Plan originally was premised) and, more

23 _____
24 as a substantial contribution. See, e.g., *In re Johnson*, 126 B.R. 808, 811 (Bankr. M.D. Fla.
25 1991) (preparation of proof of claim and review of disclosure statement and plan); *In re*
26 *D.W.G.K. Restaurants, Inc.*, 84 B.R. 684, 688-90 (Bankr. S.D. Cal. 1988) (noting that mere
attendance at hearings, review of proceedings and participation in plan confirmation
proceedings do not constitute substantial contributions).

27 ¹⁹ But see *Lister v. United States (In re Lister)*, 846 F.2d 55, 57 (10th Cir. 1988) (holding
28 otherwise).

1 importantly, have provided creditors with an alternative to PG&E's Plan – one which results in
2 payment in full to all creditors and contains fewer legal and regulatory hurdles.²⁰ UBS
3 Warburg's efforts to raise the financing necessary to implement the Commission's Plan further
4 enhances the Commission's already substantial contribution to PG&E's reorganization. As is
5 evident from the Committee Report, in the Committee's view, the major obstacle to confirmation
6 of the Commission's Plan is whether the financing under the Commission's Plan will be
7 available. UBS Warburg's efforts will address this concern and move the Commission's Plan
8 closer to confirmation. As a result, PG&E's emergence from bankruptcy and creditor
9 distributions will be accelerated.

10 Courts in analogous circumstances have found that where a creditor has materially
11 advanced the confirmation ball, that creditor is entitled to have its expenses allowed and paid as
12 administrative expense claims by reason of its substantial contribution to the debtor's
13 reorganization. *See, e.g., D.P. Partners Ltd. P'ship.*, 106 F. 3d at 670 (creditor made substantial
14 contribution to reorganization and was awarded expenses where it proposed a competing plan
15 that set off a bidding war and resulted in \$3 million more for creditors than previous plan); *Milo*
16 *Butterfinger's, Inc. v. Two Down, Inc.*, 1998 WL 292371 at *2 (N.D. Tex. May 21, 1998)
17 (creditor made substantial contribution to successful reorganization and was entitled to
18 administrative expense claim where it filed competing plan that resulted in debtor filing plan of
19 reorganization that paid creditors 100% of claims on plan's effective date rather than over a
20 period of time); *In re Condere Corp.*, 251 B.R. 693, 695 (Bankr. S.D. Miss. 2000) (creditor made
21 substantial contribution to successful reorganization where it led efforts to find viable purchaser
22 for debtor's assets and such efforts resulted in a forty percent increase in creditor distributions);
23 *In re 9085 E. Mineral Office Bldg., Ltd.*, 119 B.R. at 252 (formulating successful plan of
24

25 ²⁰ In the opinion of the Official Committee of Unsecured Creditors appointed in this case (the
26 "Committee"), "the [Commission's] Plan presently faces uncertainties over its financial
27 feasibility, but otherwise, *faces fewer legal and regulatory hurdles than the PG&E Plan.*
28 Thus, it appears that the [Commission's] Plan could be consummated more quickly."
Committee Report at 13-14 (emphasis added).

1 reorganization constituted “substantial contribution”); *Marcus, Montgomery, Wolfson & Burten*
2 *P.C., et. al. v. Am. Int’l, Inc. (In re Am. Int’l, Inc.)*, 203 B.R. 898, 901-02 (D. Del. 1996) (holding
3 equity holders made substantial contribution to reorganization where they negotiated settlement
4 with debtor whereby plan provided for the issuance of warrants to holders of preferred stock).
5 The same result is warranted here.²¹

6 It is worth noting that a “substantial contribution” award under section 503(b)(3)(D) is
7 not dependent upon the Commission’s success in confirming its Plan. *See* H. R. Rep. No. 95-
8 595, 95th Cong., 1st Sess. 355 (“The phrase ‘substantial contribution in the case’ . . . does not
9 require a contribution that leads to confirmation of a plan”); *see also* *Lister*, 846 F.2d at 58;
10 *In re Russell Transfer, Inc.*, 59 B.R. 871, 872 (Bankr. W.D. Va. 1986); *In re 9085 E. Mineral*
11 *Office Bldg., Ltd.*, 119 B.R. at 252 n. 15. Instead, it is enough that the Commission’s efforts
12 merely further or enhance PG&E’s reorganization and creditor recoveries. *See In re D.P.*
13 *Partners Ltd. P’ship*, 106 F.3d at 673 (affirming that discovering fraudulent conveyance,
14 terminating exclusivity and causing debtor to change its plan constituted substantial
15 contribution); *Lister*, 846 F.2d at 57 (“the applicable test is whether the efforts of the applicant
16 resulted in an actual and demonstrable benefit to the debtor’s estate and the creditors.”); *In re*
17 *Texaco, Inc.*, 90 B.R. at 630-31 (preservation of valuable asset for bankruptcy estate constitutes a
18 substantial contribution).

19
20
21 ²¹ Courts have found a “substantial contribution” even where a creditor contributed much less
22 directly to the debtor’s reorganization or repayment of creditors. *See e.g., In re Rail Pass*
23 *Express, Inc.*, 227 B.R. 136, 138 (Bankr. S.D. Ohio) (creditor made substantial contribution
24 to successful reorganization where its filing of motion to convert case to chapter 7 caused
25 debtor to dismiss its case and make full payment to all of its creditors); *In re Texaco, Inc.*, 90
26 B. R. 622, 629 (Bankr. S.D.N.Y. 1988) (attorneys for shareholders filing derivative suit made
27 substantial contribution to reorganization and were entitled to reimbursement of fees as an
28 administrative expense where their efforts resulted in an investigation of debtor’s directors
and increased disclosure to shareholders, notwithstanding fact that derivative suits were
eventually dismissed); *In re Stoecker*, 128 B.R. 205, 209 (Bankr. N.D. Ill. 1991) (creditors
entitled to administrative expense for attorney’s fees incurred where attorneys filed
involuntary petition against debtor and trustee was appointed and such appointment
substantially benefited the estate).

1 The mere presence of the Commission's Plan, without more, adds immeasurable value
2 here. For one thing, as mentioned above, the Commission's plan-related efforts have resulted,
3 and may continue to result, in numerous improvements and other modifications to PG&E's Plan.
4 In addition, the existence of the Commission's Plan as an alternative to PG&E's Plan keeps the
5 hope alive for a consensual plan in this case. Absent the Commission's Plan, creditors would
6 have no choice but to hitch themselves to PG&E's high-risk confirmation approach and hope that
7 someday the legal morass unleashed by PG&E's Plan sorts itself out. Creditors now have a
8 choice between the Commission's Plan and PG&E's Plan; that alone is a substantial
9 contribution.

10 For the Commission's Plan to remain credible, and the choice afforded creditors to
11 continue to be a meaningful one, the Commission must be able to engage UBS Warburg on the
12 terms and conditions set forth in the Engagement Letter. If the Commission is unable to begin
13 arranging for the financing required under its Plan, then the Commission's Plan will face
14 numerous confirmation hurdles, which, in turn, could jeopardize many, if not all, of the desired
15 benefits of the competing plan process. By starting to raise financing now, UBS Warburg, at a
16 minimum, will be maintaining the viability of the competing plan process and, in doing so, will
17 be substantially contributing to PG&E's reorganization.

18 Accordingly, the Court should direct PG&E to pay all amounts payable to UBS Warburg
19 under the Engagement Letter pursuant to section 503(b)(3)(D) of the Bankruptcy Code.

20 **3. Obligations to UBS Warburg Constitute Administrative**
21 **Expense Claims Regardless of Whether They Fit Within**
22 **Section 503(b)'s Enumerated Categories**

23 Even if the obligations to UBS Warburg do not fit squarely within one or more of the
24 enumerated administrative expense claim categories contained in section 503(b), the
25 Commission requests that this Court find that such obligations nonetheless are administrative
26 expense claims. Congress' use of the word "including" in the preamble to section 503(b) means
27 that the list is not exhaustive. 11 U.S.C. § 102(3) ("includes' and 'including' are not limiting");
28 *In re Megafood Stores, Inc.*, 163 F.3d at 1071 ("[T]he use of a form of the word 'include' is

1 significant, and generally thought to imply that terms listed immediately afterwards are an
2 inexhaustive list of examples, rather than a bounded set of applicable items”), quoting *In re*
3 *Mark Anthony Constr., Inc.*, 886 F.2d 1101, 1106 (9th Cir. 1989). The uniqueness of the present
4 situation coupled with the obvious benefits stemming from the competing plan process and UBS
5 Warburg’s financing efforts merit an expansive view of section 503(b) of the Bankruptcy Code
6 and treatment of amounts owing to UBS Warburg as administrative expense claims.

7 **4. UBS Warburg Will Be Extending Credit**
8 **Under Section 364 of the Bankruptcy Code**

9 The Commission requests that the Court authorize PG&E to incur obligations to UBS
10 Warburg under the Engagement Letter on an unsecured basis pursuant to section 364(b) of the
11 Bankruptcy Code. That section provides, in pertinent part, that

12 [t]he court, after notice and a hearing, may authorize the trustee to
13 obtain unsecured credit or to incur unsecured debt . . . allowable
14 under section 503(b)(1) of this title as an administrative expense.

15 11 U.S.C. § 364(b).

16 Under the Engagement Letter, PG&E would incur obligations to UBS Warburg as work
17 is performed and completed. Until payment is made by PG&E, UBS Warburg would be an
18 unsecured creditor of PG&E, having performed services for PG&E on the terms set forth in the
19 Engagement Letter. Like PG&E’s other service providers, UBS Warburg’s unpaid extensions of
20 credit would be entitled to be treated as administrative expense claims pursuant to sections
21 364(b) and 503(b)(1) of the Bankruptcy Code. *See e.g., In re Payless Cashways, Inc.*, 268 B.R.
22 543, 547-48 (Bankr. W.D. Mo. 2001) (granting administrative expense priority to critical vendor;
23 “Section 364(b) gives the court broad authority to allow a debtor to obtain credit, out of the
24 ordinary course of business, and allowable as an administrative expense.”).

25 In addition to requesting that UBS Warburg’s fees and expenses be treated as
26 administrative expense claims under section 364(b) of the Bankruptcy Code, the Commission
27 further requests that UBS Warburg qualify for the protection accorded parties extending credit in
28 “good faith” under section 364(e) of the Bankruptcy Code. That section provides, in pertinent
part, that

1 [t]he reversal or modification on appeal of an authorization under
2 this section to obtain credit or to incur debt, or of a grant under this
3 section of a priority or a lien, does not affect the validity of any
4 debt so incurred, or any priority or lien so granted, to an entity that
5 extended such credit in good faith, whether or not such entity knew
6 of the pendency of the appeal, unless such authorization and the
7 incurring of such debt, or the granting of such priority or lien, were
8 stayed pending appeal.

9 11 U.S.C. § 364(e).

10 The Bankruptcy Code does not define “good faith.” According to *Colliers on*
11 *Bankruptcy*, “[t]he concept is derived from former Bankruptcy Rule 805, which used similar
12 language.” 4 *Collier on Bankruptcy* at ¶ 364.06[1], citing *Cnty. Thrift & Loan v. Suchy (In re*
13 *Suchy)*, 786 F.2d 900, 902 (9th Cir. 1985) (noting that “good faith” requirement under former
14 Bankruptcy Rule 805 speaks to the integrity of the parties’ conduct during the course of the sale
15 proceedings). In the Ninth Circuit, “[a] creditor fails to act in good faith if it acts for an improper
16 purpose.” See *Adams Apple, Inc. v. Cent. Wash. Bank (In re Adams Apple, Inc.)*, 829 F.2d 1484,
17 1489 (9th Cir. 1987) (noting that misconduct that defeats good faith includes fraud, collusion, or
18 attempting to take grossly unfair advantage of others). Good faith has also been interpreted to be
19 “a compact reference to an implied undertaking not to take opportunistic advantage” *Kham*
20 *& Nate’s Shoes No. 2 v. First Bank of Whiting*, 908 F.2d 1351, 1357 (7th Cir. 1990) (noting that
21 good faith does not require a lender to put the interests of the debtor and the debtor’s creditors
22 first); see also *Ellingsen MacLean Oil Co. v. First Nat’l. Bank & Trust Co. of Escanaba (In re*
23 *Ellingsen MacLean Oil Co.)*, 65 B.R. 358, 363 (Bankr. W.D. Mich. 1986), *aff’d* 834 F.2d 599
24 (6th Cir. 1987) (“Good faith means honesty in fact in the conduct or transaction concerned.”,
25 quoting U.C.C. § 1-201(19)).

26 Here, UBS Warburg has acted in good faith in negotiating the Engagement Letter with
27 the Commission. The negotiations have been at arms’ length, UBS Warburg is not affiliated
28 with nor does it have any preexisting relationship with the Commission, and all terms of UBS
Warburg’s engagement have been fully disclosed.

1 **C. UBS Warburg Should Be Paid in Accordance With the Terms of the Engagement**
2 **Letter and the Indemnification Agreement; Payment Cannot Await Confirmation.**

3 In addition to allowing UBS Warburg's fees and expenses as administrative expense
4 claims pursuant to section 503(b) of the Bankruptcy Code, the Commission respectfully requests
5 that UBS Warburg be paid as and when such amounts become due in accordance with the terms
6 of the Engagement Letter. Allowance under section 503(b) does not equate to payment.
7 However, once UBS Warburg's fees and expenses are allowed under section 503(b) of the
8 Bankruptcy Code, their payment is required. *See* 11 U.S.C. § 1129(a)(9)(A).²² Payment need
9 not, and indeed in this case should not, await confirmation. Indeed, PG&E has been paying
10 various administrative expense claims throughout the pendency of this case, including, without
11 limitation, its professional fees and expenses and amounts described in its Plan Implementation
12 Motions. "[T]he better view is that the determination of when administrative expenses are to be
13 paid is within the discretion of the Court." *In re 9085 E. Mineral Office Bldg., Ltd.*, 119 B.R. at
14 248 n.5, quoting *In re Kaiser Steel Corp.*, 74 B.R. 885, 891 (Bankr. D. Colo. 1987).²³

15 Here, payment of UBS Warburg's fees and expenses by PG&E as and when they become
16 due is particularly appropriate. As a State agency with limited resources, the Commission
17 simply is unable to advance payment to UBS Warburg and await reimbursement sometime after

18 ²² Section 1129(a)(9)(A) of the Bankruptcy Code requires that "[e]xcept to the extent that the
19 holder of a particular claim has agreed to a different treatment of such claim, the plan
20 provides that –

21 (A) with respect to a claim of a kind specified in section 507(a)(1) or 507(a)(2) of this title,
22 on the effective date of the plan, the holder of such claim will receive on account of such
23 claim cash equal to the allowed amount of such claim;

24

25 11 U.S.C. § 1129(a)(9)(A).

26 ²³ *Accord Verco Indus. v. Spartan Plastics (In re Verco Indus.)*, 20 B.R. 664, 665 (9th Cir.
27 B.A.P. 1982) ("The determination of when an administrative expense is to be paid is within
28 the discretion of the trial court."); *In re Catalina Spa & R.V. Resort, Ltd.*, 97 B.R. at 19
("Determination of compensable administrative expenses is within the discretion of the
bankruptcy court."); *see also* 4 *Collier on Bankruptcy* at ¶ 503.03 ("The time at which a
particular administrative expense can or must be paid will vary from case to case depending
on the chapter under which the case was filed and the circumstances of the case.").

1 Plan confirmation and effectiveness. Pursuant to section 32 of the annual Budget Act, the
2 Commission may only spend funds that are allocated in its budget authorized by the California
3 Legislature, or that are authorized by means of a deficiency appropriation under section 27 of the
4 Budget Act. Franklin Decl. at ¶ 4. The approved Commission-support budget of approximately
5 \$100 million for the 2002-03 fiscal year (July 1, 2002 to June 30, 2003) will include funding for
6 almost 1,000 staff and related operating expenses, but includes no provision for the payment of
7 the fees and expenses at issue here. *Id.* at ¶ 5. Except for certain items before the conference
8 committee on the budget (none of which are relevant here), the California Legislature has
9 completed its review of the Commission's budget for the 2002-03 fiscal year and will be
10 submitting the Budget Bill to the Governor for signing. *Id.* Once the budget is submitted to the
11 Governor, the Governor may only *reduce* a department's budget; budget increases are not
12 permitted. *Id.*

13 Absent budgetary authority to pay UBS Warburg, the Commission cannot, as a practical
14 matter, obtain the necessary funds. The Commission could in theory apply to the Department of
15 Finance for authorization to spend funds in excess of the Commission's budget authority
16 pursuant to section 27 of the Budget Act. Franklin Decl. at ¶ 6. That process, however, typically
17 takes at least two months, and it is unlikely that authorization could be obtained. *Id.* The
18 Commission's current budget for fiscal year 2002-03 is only \$100 million in toto; an increase to
19 cover UBS Warburg's fees and expenses, which may exceed \$60 million, would almost surely be
20 denied, particularly now, given that the Commission has no identifiable source of funds to cover
21 such an increase (see below) and that the State is already facing an approximately \$23.6 billion
22 budget deficit. Further deficit spending is unlikely to be approved by the Governor and the State
23 Legislature. *Id.* at ¶9.

24 Alternatively, even if the Commission could obtain budget authority to make the
25 payments to UBS Warburg required under the Engagement Letter, it lacks the funds to do so.
26 Under state law, funds to support the Commission normally do not come from the State's
27 General Fund, but rather from fees assessed against customers of utilities regulated by the
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1 Commission (like PG&E), which are recorded in the Public Utilities Commission Utilities
2 Reimbursement Account ("PUCURA"). See Cal. Pub. Util. Code § 401. Pursuant to statute, the
3 Commission annually sets fees to produce revenues sufficient to cover its anticipated costs, plus
4 an appropriate reserve. The current reserve is less than \$10 million and, absent an increase in
5 fees, it is estimated that the June 30, 2003 PUCURA reserves will be less than \$10 million.
6 Franklin Decl. at ¶ 7. By law, the Commission must maintain an adequate reserve. Accordingly,
7 these reserve funds themselves are not available to fund the financing fees at issue here.²⁴ *Id.*

8 In view of the Commission's budgetary constraints, the Commission cannot advance
9 UBS Warburg's fees and expenses. On the other hand, PG&E can and should pay such amounts.
10 For one thing, PG&E's payment of UBS Warburg will advance implementation of the
11 Commission's Plan and accelerate PG&E's emergence from chapter 11. Absent payment, UBS
12 Warburg will delay work on structuring and arranging the financing needed for PG&E to
13 reorganize, and implementation of the Commission's Plan will be delayed. Such delay is not in
14 the best interests of PG&E, its estate or its creditors.

15 Moreover, approval of this Motion will ensure that the competing plans remain on
16 parallel tracks. From the time this Court terminated PG&E's exclusivity through the disclosure
17 statement approval process, this Court has stressed the importance of both plans being distributed
18 for vote at the same time with the end goal being a joint confirmation hearing. The Commission
19 has consistently advocated the same approach as has the Committee, and the Commission has
20 worked diligently to position its Plan for prompt confirmation. It would be unfortunate if the
21 plan process were to veer off course because of timing-of-payment issues.

22 Finally, PG&E's payment of UBS Warburg is fair and equitable and without prejudice to
23 PG&E, its estate and its creditors. As the beneficiary of UBS Warburg's efforts, it is only fair

24 ²⁴ Although the Commission can increase its reserves by increasing the PUCURA fees it
25 assesses, it is not feasible for the Commission to accumulate sufficient reserves in time to
26 fund the projected fees and expenses arising under the Engagement Letter. Because fees are
27 remitted quarterly, a Commission ordered fee increase for PG&E customers would not
28 become effective until July 1, 2002 at the earliest and not deposited into the PUCURA until
after November 15, 2002. Franklin Decl. at ¶ 8.

1 that PG&E shoulder the costs involved. And, as an admittedly solvent debtor with
2 approximately \$4.5 billion of cash on hand, PG&E can afford to pay the fees and expenses
3 requested without diminishing creditor recoveries.²⁵

4 **D. PG&E Should Provide Financial and Other**
5 **Information and Due Diligence Access to UBS Warburg.**

6 Finally, the Commission requests that this Court order PG&E to establish a “data room”
7 at its expense for use by UBS Warburg in connection with the services to be performed by UBS
8 Warburg under the Engagement Letter. UBS Warburg does not have access to PG&E’s books
9 and records or the other due diligence materials it will need in order to structure and market the
10 debt and equity financing required under the Commission’s Plan. The Commission has tried
11 unsuccessfully to get PG&E to voluntarily establish a “data room” at PG&E’s expense. Victor
12 Decl. at ¶ 10. The Commission is convinced that PG&E will not establish this “data room”
13 unless it is ordered to do so.

14 Specifically, the Commission expects at a minimum that the “data room” will contain
15 detailed financial information, including forward-looking information, that is typically provided
16 to lenders and underwriters. In addition, UBS Warburg will need reasonable access to PG&E’s
17 executives and other knowledgeable employees to ask questions, test assumptions and generally
18 become comfortable with PG&E’s financial condition, results of operations and prospects. The
19 Commission believes that PG&E’s full cooperation in these respects is necessary to assure the
20 integrity of the securities offerings and other financings required under the Commission’s Plan.

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23 ²⁵ According to PG&E’s April 2002 Monthly Operating Report (“the Operating Report”),
24 PG&E held more than \$4.5 billion in cash reserves as of April 30, 2002. *See Operating*
25 *Report at 1; see also, Pacific Gas Electric Company, Motion for Authority to Incur Expenses*
26 *Related to the FERC License Application for Hamilton Branch Hydroelectric Facility;*
27 *Memorandum of Points and Authorities in Support Thereof*, filed on May 31, 2002 at 7
28 (“PG&E is solvent and has sufficient cash to pay these expenses [approximately \$1 million]
without causing any detriment to its creditors.”); *Motion for Authorization to Incur and Pay*
Certain Land-Related Expenses; Memorandum of Points and Authorities in Support Thereof
at 8 (“PG&E is solvent and has sufficient cash to pay [\$5.5 million] without causing any
detriment to its creditors.”).

1 Section 105(a) of the Bankruptcy Court empowers this Court to “issue any order, process,
2 or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C.
3 § 105(a). PG&E’s cooperation in providing UBS Warburg with full financial information and
4 access to its executives and employees is necessary for the Commission to implement its Plan.
5 Without current financial and other information pertaining to PG&E’s business, UBS Warburg
6 will be unable to raise the financing required under the Commission’s Plan and the integrity of
7 information provided to potential investors will be compromised. Crews Decl. at ¶ 11. The
8 Commission submits that an order requiring PG&E to provide UBS Warburg with financial
9 information and due diligence access so that the Commission may implement its Plan is entirely
10 consistent with this Court’s order terminating exclusivity and sections 1121 and 1129 of the
11 Bankruptcy Code.

12 PG&E will be minimally burdened, if at all, by the Commission’s instant request. *First*,
13 PG&E has all of the information UBS Warburg may need; it’s just a matter of copying such
14 information, setting up a room at PG&E where the information can be stored and made
15 accessible, updating it, responding to requests for supplemental data and making its executives
16 and employees available to discuss such information. *Second*, PG&E already has provided the
17 Commission with some of this information in connection with certain informal document
18 requests made by Chanin during the time the Commission was formulating its Plan. *Finally*,
19 PG&E inevitably will need to perform this exercise in connection with plan-related discovery,
20 which is to begin shortly.

21 For these reasons, the Court should order PG&E to provide financial information and due
22 diligence access to UBS Warburg at PG&E’s expense.²⁶

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25 ²⁶ For the reasons already expressed above, such an expenditure is authorized under sections
26 363(b) and 1107 of the Bankruptcy Code. Nothing would be gained by requiring the
27 Commission to pay for the “data room” and then seek reimbursement from PG&E under
28 section 503(b) of the Bankruptcy Code. Either way, PG&E ultimately has to pay,
particularly in light of this Court’s decision to terminate PG&E’s plan exclusivity.

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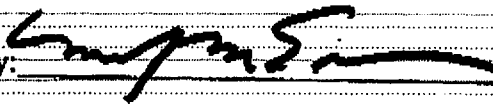
V. CONCLUSION

WHEREFORE, the Commission respectfully requests that this Court enter an order (a)(i) directing PG&E to incur the amounts payable to UBS Warburg under the Engagement Letter pursuant to sections 363(b), 364(b) and 1107 of the Bankruptcy Code or, alternatively, (ii) allowing UBS Warburg's fees, expenses and indemnification claims (if any) pursuant to section 503(b) of the Bankruptcy Code and requiring their timely payment by PG&E in accordance with the Engagement Letter, (b) requiring PG&E to provide financial and other information and due diligence access to UBS Warburg for use by UBS Warburg in connection with the services to be performed by UBS Warburg under the Engagement Letter, and (c) granting such other and further relief as this Court deems just and proper.

DATED: June 25, 2002

Respectfully submitted,

GARY M. COHEN
AROCLES AGUILAR
MICHAEL M. EDSON
CALIFORNIA PUBLIC UTILITIES COMMISSION

By: 

and

ALAN W. KORNBERG
BRIAN S. HERMANN
MARC F. SKAPOF
PAUL, WEISS, RIFKIND, WHARTON & GARRISON

Attorneys for the California Public Utilities Commission

EXHIBIT A

EXHIBIT A

June 10 , 2002

CONFIDENTIAL

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94111

Attention: Gary M. Cohen
General Counsel

Ladies and Gentlemen:

1. UBS Warburg LLC ("UBS Warburg") is pleased to act as financing and capital markets arranger for the California Public Utilities Commission ("CPUC") in connection with the financing of a chapter 11 plan of reorganization for Pacific Gas and Electric Company (together with its subsidiaries, "PG&E") in its reorganization proceedings currently pending before the United States Bankruptcy Court for the Northern District of California (the "**Bankruptcy Court**"). This letter agreement (the "**Agreement**") confirms the terms of our engagement. The term ("**Term**") of UBS Warburg's engagement hereunder shall commence on the date this Agreement becomes effective and continue until the consummation of a plan of reorganization for PG&E or, if earlier, the date as of which the services of UBS Warburg are terminated pursuant to Section 5 below.

As used in this Agreement, the term "financing of a chapter 11 plan of reorganization" means, whether effected directly or indirectly in one or a series of transactions, the consummation by PG&E (or its affiliated entities or subsidiaries, whether now existing or newly created) of a bank financing or the issuance and/or sale of debt or equity securities in the public or private markets or otherwise (including the issuance or sale of such securities to existing creditors or interest holders of PG&E), for the purpose of financing or funding a confirmed plan of reorganization of PG&E.

On the terms and subject to the conditions of this Agreement, UBS Warburg will provide the CPUC with such financial and market related advice and assistance with respect to the financing of a chapter 11 plan of reorganization as may be appropriate and mutually agreed upon by the CPUC and UBS Warburg, which may include assisting the CPUC in analyzing, structuring, negotiating and effecting any financing by PG&E of a plan of reorganization.

UBS Warburg and its affiliates will have the exclusive right to provide or arrange for any financing in connection with any plan of reorganization of which the CPUC is the proponent. If UBS Warburg provides such services, UBS Warburg will be compensated as set forth herein or pursuant to separate



agreements referred to herein. Any financing in which UBS Warburg participates shall be conditioned upon PG&E entering into a separate agreement containing terms and conditions, including appropriate indemnification and fee provisions, customary for UBS Warburg with respect to such transactions including, without limitation, required Bankruptcy Court and regulatory approvals.

It is understood and agreed that nothing contained in this Agreement shall constitute a commitment by UBS Warburg to underwrite, place or purchase any securities or to arrange any other form of financing. Such a commitment, if any, shall only be set forth in a separate underwriting, placement, agency or similar agreement relating to the financing, which contains fee arrangements and other terms and conditions, including appropriate indemnification provisions, satisfactory to UBS Warburg.

2. For UBS Warburg's services hereunder, CPUC agrees that UBS Warburg will be paid the following fees in cash (such fees to be payable by PG&E pursuant to order of the Bankruptcy Court as set forth below):

Retainer Fees

(a) Retainer fees, payable in four parts as follows:

(i) \$3,000,000 promptly upon the effectiveness of this Agreement;

(ii) an additional \$2,500,000 promptly upon the delivery to the CPUC of a written proposal by UBS Warburg to provide or arrange for the financing of a chapter 11 plan of reorganization, which shall be based on reasonably detailed assumptions regarding market conditions, rate path and financial performance of reorganized PG&E and include reasonably detailed term sheets describing the terms of each class and series of debt and equity securities to be issued and sold in public or private transactions;

(iii) an additional \$2,500,000 promptly upon the earlier to occur of (x) the 45th day following the delivery to the CPUC of the written proposal described in (ii) above or (y) the acceptance for use by the CPUC of a revised or final written proposal by UBS Warburg to provide or arrange for the financing of a chapter 11 plan of reorganization (which shall be evidenced, among other things, by the reference to such proposal as its proposal or financing plan by the CPUC or its representatives in public statements or in written communications with PG&E, the Bankruptcy Court or any committee of creditors or interest holders, or in any filing with the Bankruptcy Court); and

(iv) commencing in March 2003, a monthly fee of \$150,000, payable on the first day of each month or portion thereof during the Term.

Commitment Fees



(b) Fees (the “**Commitment Fees**”), payable promptly upon the delivery to the CPUC (or as the case may be, PG&E) prior to the effective date of a chapter 11 plan of reorganization of a binding commitment or commitments, subject to terms and conditions normally included in such arrangements in similar contexts, by UBS Warburg to provide or arrange for all or any portion of the financing of a chapter 11 plan of reorganization, in accordance with the formula set forth below:

<u>Funds Committed</u>	<u>Fee Percentage</u>
Senior Debt (including bank financing)	1%
Subordinated Debt	2%
Convertible Securities	2%
Public or Private Equity	4%

It is expressly understood that a separate Commitment Fee shall be payable in respect of each financing in the event that the relevant commitment or commitments contemplate multiple financings, but only one fee shall be payable for multiple transactions relating to the same capital raising event (for example, debt raised in an offering pursuant to Rule 144A under the Securities Act of 1933 following which a registration statement is filed covering resales of the same or underlying securities).

Consummation Fee

(c) At the time of occurrence of a Consummation Transaction (as defined below) with respect to PG&E, UBS Warburg shall receive a fee (the “**Consummation Fee**”) equal to \$60 million, *minus* up to \$60 million of the following:

- (i) the cumulative Commitment Fees previously paid to UBS Warburg; and
- (ii) the portion of any underwriting commissions retained by UBS Warburg in its capacity as lead manager or co-manager of any underwritten financing in connection with such Consummation Transaction for acting in such capacity.

For purposes hereof, a “Consummation Transaction” means the consummation of any reorganization or restructuring of liabilities of PG&E that is in material compliance with California law, including, without limitation, the earliest to occur of (i) the effective date of any chapter 11 plan of reorganization with respect to PG&E, or (ii) any repayment, exchange, conversion, modification, amendment, deferral, restructuring, rescheduling, moratorium or adjustment of the terms and/or conditions of liabilities of PG&E outstanding on the date of



commencement of PG&E's chapter 11 proceedings, whether pursuant to a chapter 11 plan of reorganization, order of the Bankruptcy Court or otherwise; provided that a Consummation Transaction shall not include any plan of reorganization that results in the disaggregation of PG&E into separate business entities with the effect of substantially removing from the CPUC its authority under current law to regulate the rates of any one or more of such separate entities. A Consummation Transaction of the type referred to in clause (ii) above shall be deemed to have occurred when the plan of reorganization or other binding document or agreement providing for such Consummation Transaction becomes effective.

Whether or not any financing transaction is consummated, in addition to any fees payable to UBS Warburg, PG&E will reimburse UBS Warburg, promptly upon its request from time to time, for reasonable expenses incurred by it in entering into and performing services pursuant to this Agreement, including the reasonable fees, disbursements and other charges of its legal counsel.

It is understood that UBS Warburg is retained solely by the CPUC hereunder and that it is not contemplated that UBS Warburg will comply with the procedures applicable to professionals retained under the Bankruptcy Code. Notwithstanding the foregoing, it is expressly understood by the parties that this Agreement shall not become effective unless the Bankruptcy Court enters an order satisfactory in form and substance to UBS Warburg providing for the payment by PG&E of all amounts payable to UBS Warburg arising out of or relating to this Agreement (including, without limitation, the related indemnification) (an "Approval Order"), and such Approval Order shall have become effective on or prior to July 10, 2002, unless extended by UBS Warburg in its sole discretion, and shall not be stayed. The CPUC shall use commercially reasonable efforts to obtain such an order.

If the Approval Order is reversed on appeal, the CPUC shall use its reasonable best efforts to obtain funding from the California State legislature and, in the event such funding is obtained, the CPUC shall use such funding to pay to UBS Warburg an amount equal to the sum of (a) any fees and expenses previously paid to UBS Warburg by PG&E pursuant to Section 2 hereof that are required to be disgorged in connection with such reversal and (b) any fees and expenses due and payable to UBS Warburg pursuant to Section 2 hereof as of the date of such reversal, in each case, to the extent that such fees and expenses have not otherwise been paid to UBS Warburg directly by PG&E after the exercise by UBS Warburg of reasonable best efforts to obtain such direct payment. Nothing herein shall obligate the CPUC to seek funding from the California State legislature for any amounts payable by PG&E (or amounts previously paid by PG&E that are required to be disgorged) under Section 10 hereof or the Indemnification Agreement referred to therein.

3. Except to the extent legally required (after consultation with UBS Warburg and its counsel), none of (i) any advice rendered by UBS Warburg to the CPUC, or (ii) any communication from UBS Warburg in connection with the



services performed by UBS Warburg pursuant to this Agreement will be quoted or referred to orally or in writing, or reproduced or disseminated, by the CPUC, without UBS Warburg's prior written consent, such consent not to be unreasonably withheld or delayed.

4. The CPUC will furnish UBS Warburg (and will request that PG&E furnish UBS Warburg) with such information as UBS Warburg believes appropriate to its assignment (all such information so furnished being the "Information"). The CPUC recognizes and confirms that UBS Warburg (a) will use and rely primarily on the Information and on information available from generally recognized public sources in performing the services contemplated by this Agreement without having assumed responsibility for independently verifying the same, (b) will assume that such Information is complete and accurate and does not assume responsibility for the accuracy, completeness or reasonableness of the Information and such other information and (c) will not make an appraisal of any assets or liabilities (contingent or otherwise) of PG&E.

5. UBS Warburg's services hereunder may be terminated by the CPUC or UBS Warburg upon 30 days prior written notice without liability or continuing obligation of the CPUC or UBS Warburg, except that (a) if terminated by the CPUC, UBS Warburg shall be entitled to the fees payable pursuant to Section 2 hereof in respect of any chapter 11 plan of reorganization of PG&E consummated within a period of 36 months following any such termination, (b) expenses incurred by UBS Warburg as a result of services rendered prior to the date of the termination by either party shall become immediately payable in full and (c) Sections 3, 4 (other than the first sentence thereof) 5, 6, the last sentence of Section 8, Sections 9, 10, 11, 12 and 13 hereof shall remain operative and in full force and effect regardless of any termination by either party.

6. In rendering its services to the CPUC hereunder, UBS Warburg is not assuming any responsibility for the CPUC's or PG&E's underlying business decision to pursue or not to pursue any plan of reorganization or to effect or not to effect any financing transaction. The CPUC agrees that UBS Warburg shall not have any obligation or responsibility to provide "crisis management" services for PG&E or to provide any solvency or fairness opinion in connection with any financing transaction.

7. UBS Warburg may, at its own expense, place customary tombstone announcements or advertisements in financial newspapers and journals describing its services hereunder with the consent of the CPUC, such consent not to be unreasonably withheld or delayed.

8. The CPUC acknowledges and agrees that UBS Warburg has been retained to act solely as an advisor to the CPUC, and not as an advisor to any other person, and the CPUC's engagement of UBS Warburg is not intended to confer rights upon any person (including PG&E and its shareholders, employees or creditors) not a party hereto as against UBS Warburg or its affiliates, or their



respective directors, officers, employees or agents, successors, or assigns. UBS Warburg shall act as an independent contractor under this Agreement, and not in any other capacity including as a fiduciary and any duties arising out of its engagement shall be owed solely to the CPUC. UBS Warburg acknowledges and agrees that the CPUC shall have no obligation or liability for any amount payable to UBS Warburg arising out of or relating to this Agreement including, without limitation, the related indemnification, and that all such amounts shall be payable by PG&E pursuant to the order of the Bankruptcy Court referred to in Section 2(c) above.

9. UBS AG (the parent of UBS Warburg) and its subsidiaries, branches and affiliates (the "UBS Group") are involved in a wide range of commercial banking, investment banking and other activities (including investment management, corporate finance and securities issuing, trading and research) from which conflicting interests or duties may arise. Information which is held elsewhere within UBS Warburg or within the UBS Group but of which none of the individuals in the Corporate Finance Department of UBS Warburg involved in providing the services contemplated by this engagement actually has (or without breach of internal procedures can properly obtain) knowledge, will not for any purpose be taken into account in determining UBS Warburg's responsibilities to the CPUC under this engagement. Neither UBS Warburg nor any other part of the UBS Group will have any duty to disclose to the CPUC or utilize for the CPUC's benefit any non-public information acquired in the course of providing services to any third party, engaging in any transaction (on its own account or otherwise) or otherwise carrying on its business. In addition, in the ordinary course of business, UBS Warburg and its affiliates may trade the securities of PG&E for its own account and for the accounts of customers, and may at any time hold a long or short position in such securities.

10. The CPUC agrees to the indemnification and other agreements set forth in the Indemnification Agreement attached hereto as Exhibit A, the provisions of which are incorporated herein by reference and shall survive the termination, expiration or supersession of this Agreement. UBS Warburg acknowledges and agrees that the CPUC shall have no obligation or liability for any amount payable to UBS Warburg arising out of or relating to this Agreement including, without limitation, the related indemnification, and that all such amounts shall be payable by PG&E pursuant to the order of the Bankruptcy Court referred to in Section 2(c) above.

The CPUC agrees that neither UBS Warburg nor any of its affiliates, directors, agents, employees or controlling persons shall have any liability to the CPUC, and the CPUC hereby releases, acquits and forever discharges UBS Warburg and such persons of and from any and all losses, claims, damages, liabilities and expenses, of any kind or nature whatsoever, from or in connection with or as a result of either UBS Warburg's engagement under this Agreement or any matter referred to in the Agreement, including, without limitation, related services and activities prior to the date of the Agreement, except to the extent that

it shall be determined by a court of competent jurisdiction in a judgment that has become final in that it is no longer subject to appeal or other review that any losses, claims, damages, liabilities or expenses incurred by the CPUC resulted solely from the (i) nonperformance by UBS Warburg of its services under this Agreement or (ii) gross negligence or willful misconduct of UBS Warburg in performing the services that are the subject of the Agreement. Except for the enforcement of the rights or claims described in (i) and (ii) above, the CPUC covenants that it will not sue or bring any claim or action against UBS Warburg or any of its affiliates, directors, agents, employees or controlling persons. This covenant shall be a complete defense to any such claim or suit by the CPUC.

11. THIS AGREEMENT AND ANY CLAIM, COUNTERCLAIM OR DISPUTE OF ANY KIND OR NATURE WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT ("CLAIM"), DIRECTLY OR INDIRECTLY, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. EXCEPT AS SET FORTH BELOW AND AS MAY BE REQUIRED BY APPLICABLE LAW, NO CLAIM MAY BE COMMENCED, PROSECUTED OR CONTINUED IN ANY COURT OTHER THAN THE COURTS OF THE STATE OF NEW YORK LOCATED IN THE CITY AND COUNTY OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, WHICH COURTS SHALL HAVE EXCLUSIVE JURISDICTION OVER THE ADJUDICATION OF SUCH MATTERS, AND THE CPUC AND UBS WARBURG CONSENT TO THE JURISDICTION OF SUCH COURTS AND PERSONAL SERVICE WITH RESPECT THERETO. THE CPUC HEREBY CONSENTS TO PERSONAL JURISDICTION, SERVICE AND VENUE IN ANY COURT IN WHICH ANY CLAIM ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT IS BROUGHT BY ANY THIRD PARTY AGAINST UBS WARBURG OR ANY INDEMNIFIED PARTY. EACH OF UBS WARBURG AND THE CPUC WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING OR CLAIM (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT. THE CPUC AGREES THAT A FINAL JUDGMENT IN ANY PROCEEDING OR CLAIM ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT BROUGHT IN ANY SUCH COURT SHALL BE CONCLUSIVE AND BINDING UPON THE CPUC AND MAY BE ENFORCED IN ANY OTHER COURTS TO THE JURISDICTION OF WHICH THE CPUC IS OR MAY BE SUBJECT, BY SUIT UPON SUCH JUDGMENT.

12. This Agreement (including the attached Indemnification Agreement) embodies the entire agreement and understanding between the parties hereto and supersedes all prior agreements and understandings relating to the subject matter hereof. If any provision of this Agreement is determined to be invalid or unenforceable in any respect, such determination will not affect such provision in any other respect or any other provision of this Agreement, which will remain in full force and effect. This Agreement may not be amended or otherwise modified



or waived except by an instrument in writing signed by both UBS Warburg and the CPUC. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

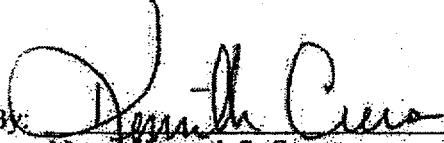
13. This Agreement shall be binding upon the CPUC and UBS Warburg and their respective successors and assigns.




If the foregoing correctly sets forth our understanding, please indicate your acceptance thereof in the space provided below, whereupon this Agreement and your acceptance shall constitute a binding agreement between us.

Very truly yours,

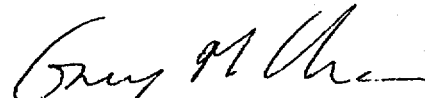
UBS WARBURG LLC

By: 
Name: Kenneth S. Crews
Title: Vice Chairman

By: 
Name: Walter S. Hulse, III
Title: Managing Director

Accepted and agreed to as of the date first above written:

CALIFORNIA PUBLIC UTILITIES COMMISSION

By: 
Name: Gary M. Cohen
Title: General Counsel

UBS Warburg LLC Indemnification Agreement

June 10, 2002

UBS Warburg LLC
299 Park Avenue
New York, New York 10171

Ladies and Gentlemen:

In connection with the engagement of UBS Warburg LLC ("UBS Warburg") to advise and assist the undersigned (referred to as the "CPUC") with the matters set forth in the Agreement dated June 10, 2002 between the CPUC and UBS Warburg (the "Agreement"), in the event that UBS Warburg becomes involved in any capacity in any claim, suit, action, proceeding, investigation or inquiry (including, without limitation, any shareholder or derivative action or arbitration proceeding) (collectively, a "Proceeding") in connection with any matter in any way relating to or referred to in the Agreement or arising out of the matters contemplated by the Agreement, including, without limitation, related services and activities prior to the date of the Agreement, the CPUC agrees to indemnify, defend and hold UBS Warburg harmless to the fullest extent permitted by law, from and against any losses, claims, damages, liabilities and expenses in connection with any matter in any way relating to or referred to in the Agreement or arising out of the matters contemplated by the Agreement, including, without limitation, related services and activities prior to the date of the Agreement, except to the extent that it shall be determined by a court of competent jurisdiction in a judgment that has become final in that it is no longer subject to appeal or other review, that such losses, claims, damages, liabilities and expenses resulted solely from the gross negligence or willful misconduct of UBS Warburg. In addition, in the event that UBS Warburg becomes involved in any capacity in any Proceeding in connection with any matter in any way relating to or referred to in the Agreement or arising out of the matters contemplated by the Agreement, the CPUC will reimburse UBS Warburg for its legal and other expenses (including the cost of any investigation and preparation) as such expenses are incurred by UBS Warburg in connection therewith. If such indemnification were not to be available for any reason, the CPUC agrees to contribute to the losses, claims, damages, liabilities and expenses involved (i) in the proportion appropriate to reflect the relative benefits received or sought to be received by the CPUC, Pacific Gas & Electric Company and its subsidiaries and affiliates ("PG&E") and other constituencies, on the one hand, and UBS Warburg, on the other hand, in the matters contemplated by the Agreement or (ii) if (but only if and to the extent) the allocation provided for in clause (i) is for any reason held unenforceable, in such proportion as is appropriate to reflect not only the relative benefits referred to in

clause (i) but also the relative fault of the CPUC, PG&E and other constituencies, on the one hand, and the party entitled to contribution, on the other hand, as well as any other relevant equitable considerations. The CPUC agrees that for the purposes of this paragraph the relative benefits received, or sought to be received, by the CPUC, on the one hand, and the party entitled to contribution, on the other hand, of a transaction as contemplated shall be deemed to be in the same proportion that the total value received or contemplated to be received by PG&E as a result of or in connection with the chapter 11 plan of reorganization and any related financing transaction (whether or not consummated) for which UBS Warburg has been retained to perform financial services bears to the fees paid to UBS Warburg under the Agreement; provided, that in no event shall the CPUC contribute less than the amount necessary to assure that UBS Warburg is not liable for losses, claims, damages, liabilities and expenses in excess of the amount of fees actually received by UBS Warburg pursuant to the Agreement. Relative fault shall be determined by reference to, among other things, whether any alleged untrue statement or omission or any other alleged conduct relates to information provided by the CPUC or PG&E or other conduct by the CPUC or PG&E (or their employees or other agents), on the one hand, or by UBS Warburg, on the other hand. The CPUC will not settle any Proceeding in respect of which indemnity may be sought hereunder, whether or not UBS Warburg is an actual or potential party to such Proceeding, without UBS Warburg's prior written consent. For purposes of this Indemnification Agreement, UBS Warburg shall include UBS Warburg LLC, any of its affiliates, each other person, if any, controlling UBS Warburg or any of its affiliates, their respective officers, current and former directors, employees and agents, and the successors and assigns of all of the foregoing persons. The foregoing indemnity and contribution agreement shall be in addition to any rights that any indemnified party may have at common law or otherwise.

UBS Warburg acknowledges and agrees that the CPUC shall have no obligation or liability for any amount payable to UBS Warburg arising out of or relating to this Indemnification Agreement and that all such amounts shall be payable by PG&E pursuant to an order of the United States Bankruptcy Court for the Northern District of California.

The CPUC agrees that neither UBS Warburg nor any of its affiliates, directors, agents, employees or controlling persons shall have any liability to the CPUC or any person asserting claims on behalf of or in right of the CPUC in connection with or as a result of either UBS Warburg's engagement under the Agreement or any matter referred to in the Agreement, including, without limitation, related services and activities prior to the date of the Agreement, except to the extent that it shall be determined by a court of competent jurisdiction in a judgment that has become final in that it is no longer subject to appeal or other review that any losses, claims, damages, liabilities or expenses incurred by the CPUC resulted solely from the gross negligence or willful misconduct of UBS Warburg in performing the services that are the subject of the Agreement.


THIS INDEMNIFICATION AGREEMENT AND ANY CLAIM, COUNTERCLAIM OR DISPUTE OF ANY KIND OR NATURE WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT ("CLAIM"), DIRECTLY OR INDIRECTLY, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. EXCEPT AS SET FORTH BELOW, NO CLAIM MAY BE COMMENCED, PROSECUTED OR CONTINUED IN ANY COURT OTHER THAN THE COURTS OF THE STATE OF NEW YORK LOCATED IN THE CITY AND COUNTY OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, WHICH COURTS SHALL HAVE EXCLUSIVE JURISDICTION OVER THE ADJUDICATION OF SUCH MATTERS, AND THE CPUC AND UBS WARBURG CONSENT TO THE JURISDICTION OF SUCH COURTS AND PERSONAL SERVICE WITH RESPECT THERETO. THE CPUC HEREBY CONSENTS TO PERSONAL JURISDICTION, SERVICE AND VENUE IN ANY COURT IN WHICH ANY CLAIM ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT IS BROUGHT BY ANY THIRD PARTY AGAINST UBS WARBURG OR ANY INDEMNIFIED PARTY. EACH OF UBS WARBURG AND THE CPUC WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING OR CLAIM (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT. THE CPUC AGREES THAT A FINAL JUDGMENT IN ANY PROCEEDING OR CLAIM ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT BROUGHT IN ANY SUCH COURT SHALL BE CONCLUSIVE AND BINDING UPON THE CPUC AND MAY BE ENFORCED IN ANY OTHER COURTS TO THE JURISDICTION OF WHICH THE CPUC IS OR MAY BE SUBJECT, BY SUIT UPON SUCH JUDGMENT.



The foregoing Indemnification Agreement shall remain in full force and effect notwithstanding any termination of UBS Warburg's engagement. This Indemnification Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

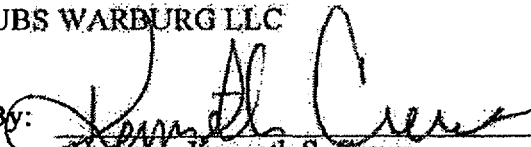
Very truly yours,

CALIFORNIA PUBLIC UTILITIES
COMMISSION

By: 
Name: Gary M. Cohen
Title: General Counsel

Accepted and agreed to as of the date first above written:

UBS WARBURG LLC

By: 
Name: Kenneth S. Crews
Title: Vice Chairman

By: 
Name: Walter S. Hulse, III
Title: Managing Director

EXHIBIT B

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GARY M. COHEN, SBN 117215
AROCLES AGUILAR, SBN 94753
MICHAEL M. EDSON, SBN 177858
CALIFORNIA PUBLIC UTILITIES COMMISSION
505 Van Ness Avenue
San Francisco, California 94102
Telephone: (415) 703-2015
Facsimile: (415) 703-2262

ALAN W. KORNBERG
BRIAN S. HERMANN
MARC F SKAPOF
PAUL, WEISS, RIFKIND, WHARTON & GARRISON
1285 Avenue of the Americas
New York, New York 10019-6064
Telephone: (212) 373-3000
Facsimile: (212) 757-3990

Attorneys for the California Public Utilities Commission

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re
PACIFIC GAS AND ELECTRIC COMPANY,
a California corporation,
Debtor.

Case No. 01-30923 DM
Chapter 11 Case
Date: [To Be Set]
Time: [To Be Set]
Place: 235 Pine Street, 22nd Floor
San Francisco, California

Federal I.D. No. 94-0742640

DECLARATION OF WESLEY M. FRANKLIN

1 WESLEY M. FRANKLIN declares under penalty of perjury:

2 1. I am Executive Director of the California Public Utilities Commission (the
3 "Commission"). I have worked at the Commission for over 27 years and have been its Executive
4 Director since November 1995. Pursuant to Section 308 of the California Public Utilities Code, I
5 am responsible for (a) the Commission's executive and administrative duties, (b) organizing,
6 coordinating, supervising, and directing the operations and affairs of the Commission generally,
7 (c) expediting all matters within the Commission's jurisdiction, (d) issuing all necessary process,
8 writs, warrants, and notices, and (e) maintaining a full and true record of all proceedings before
9 the Commission.

10 2. I have reviewed and am familiar with the terms and conditions set forth in that
11 certain Engagement Letter between the Commission and UBS Warburg LLC ("UBS Warburg"),
12 dated June 10, 2002.

13 3. The Commission cannot pay UBS Warburg's fees and expenses under the
14 Engagement Letter. This is so for the reasons detailed below.

15 4. Pursuant to section 32 of the annual Budget Act, the Commission may only spend
16 funds that are allocated in its budget authorized by the California Legislature, or that are
17 authorized by means of a deficiency appropriation under section 27 of the Budget Act.

18 5. There are no funds available in the Commission's fiscal year 2002-03 (July 1,
19 2002-June 30, 2003) budget to pay UBS Warburg's fees and expenses. Except for certain items
20 before the conference committee on the budget, the California Legislature has completed its
21 review of the Commission's budget for the 2002-03 fiscal year and will be submitting the Budget
22 Bill to the Governor for signing. The Governor may reduce, but can not increase a department's
23 budget. *See* Cal. Const. Art. 4, § 10(e). The approved Commission-support budget of
24 approximately \$100 million will include sufficient funding for almost 1,000 staff and related
25 operating expenses, but includes no provision for the payment of UBS Warburg's fees and
26 expenses.
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1 6. In the absence of an item in the budget, the Commission could apply to the
2 Department of Finance for authorization to spend funds in excess of the Commission's budget
3 authority, pursuant to section 27 of the Budget Act. That process, however, typically takes two
4 months minimum, and there is no guarantee that authorization could be obtained. Because the
5 size of this request is potentially so large and because the Commission has no identifiable source
6 of funds to cover such an increased authorization (see below), it is unlikely that such a deficit
7 spending request would be approved. *See* ¶ 8 below.

8 7. Even if the Commission had budget authority to make these payments, it lacks the
9 funds to do so. Under state law, funds to support the Commission normally do not come from
10 the State of California's General Fund, but rather from fees assessed customers of utilities
11 regulated by the Commission, which are recorded in the Public Utilities Commission Utilities
12 Reimbursement Account ("PUCURA"). *See* Cal. Pub. Util. Code § 401. Pursuant to statute, the
13 Commission annually sets fees to produce revenues sufficient to cover its anticipated costs, plus
14 an appropriate reserve. The current reserve is less than \$10 million and, absent an increase in
15 fees, it is estimated that June 30, 2003 PUCURA reserves will be less than \$10 million. By law,
16 the Commission must maintain an adequate reserve. *Id.* Accordingly, these reserve funds
17 themselves are not available to fund the financing fees at issue here.

18 8. Although the Commission can increase its reserves by increasing the PUCURA
19 fees it assesses, it is not feasible for the Commission to accumulate sufficient reserves in time to
20 fund the fees at issue here. Because fees are remitted quarterly, a Commission-ordered fee
21 increase for PG&E's customers would not become effective until July 1, 2002 at the earliest and
22 not deposited into the PUCURA until after November 15, 2002.

23 9. Aside from raising funds through user fees, the only other way the Commission
24 could obtain funds sufficient to cover the financing fees would be through special legislation
25 appropriating money from the State of California's General Fund. Because California currently
26 has a \$23.6 billion deficit in its General Fund, with no agreement regarding how to close that
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1 gap, it is extremely unlikely that such legislation -- which could more than double the
2 Commission's funding -- could be obtained.

3
4 10. Finally, I understand from the Commission's Legal Division that Sections 6 and 7
5 of Article 16 of the California Constitution prohibit State agencies, like the Commission, from
6 indemnifying UBS Warburg, as required under Section 10 of the Engagement Letter and the
7 Indemnification Agreement attached thereto as Exhibit A and incorporated therein by reference.

8 I declare under penalty of perjury that the foregoing is true and correct. Executed this
9 21st day of June, 2002, at San Francisco, California.

10 
11 WESLEY M. FRANKLIN

EXHIBIT C

EXHIBIT C

1 GARY M. COHEN, SBN 117215
2 AROCLES AGUILAR, SBN 94753
3 MICHAEL M. EDSON, SBN 177858
4 CALIFORNIA PUBLIC UTILITIES COMMISSION
5 505 Van Ness Avenue
6 San Francisco, California 94102
7 Telephone: (415) 703-2015
8 Facsimile: (415) 703-2262

9 ALAN W. KORNBERG
10 BRIAN S. HERMANN
11 MARC F SKAPOF
12 PAUL, WEISS, RIFKIND, WHARTON & GARRISON
13 1285 Avenue of the Americas
14 New York, New York 10019-6064
15 Telephone: (212) 373-3000
16 Facsimile: (212) 757-3990

17 Attorneys for the California Public Utilities Commission

18 UNITED STATES BANKRUPTCY COURT
19 NORTHERN DISTRICT OF CALIFORNIA
20 SAN FRANCISCO DIVISION

21 In re
22 PACIFIC GAS AND ELECTRIC COMPANY,
23 a California corporation,
24 Debtor.
25 Federal I.D. No. 94-0742640

26 Case No. 01-30923 DM
27 Chapter 11 Case
28 Date: [To Be Set]
Time: [To Be Set]
Place: 235 Pine Street, 22nd Floor
San Francisco, California

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DECLARATION OF KENNETH S. CREWS

1 KENNETH S. CREWS declares as follows under penalty of perjury:

2 1. I am a Vice Chairman of UBS Warburg LLC ("UBS Warburg" or
3 "UBSW"), one of the largest investment banks in the world. I am the Global Head of the Energy
4 and Power Group, which is part of the Investment Banking Department of UBS Warburg. I have
5 held this position at UBS Warburg or its predecessor firms for over 10 years, and I have been in
6 the investment banking business for over 25 years. I have personal knowledge of the facts stated
7 herein except as to matters stated upon information and belief, and as to those matters, I believe
8 them to be true. If called upon to testify, I could and would competently do so.

9
10 2. UBS Warburg is a member of UBS Group, a global, integrated investment
11 services firm with invested assets of approximately US\$1.47 trillion under management. The
12 UBS Group has an equity market capitalization of approximately US\$60 billion as of June 19,
13 2002 and credit ratings of AA+ and Aa2, according to Standard & Poor's and Moody's,
14 respectively. The UBS Group employs over 70,000 people worldwide (40% in the US) with
15 approximately 1,500 offices located in 50 countries.

16
17 3. UBS Warburg is an industry leader in the fields of investment banking,
18 mergers and acquisitions, corporate restructuring, and debt and equity capital markets. In 2001,
19 UBS Warburg was ranked 7th globally in dollar value of advisory transactions, which comprised
20 239 transactions with an aggregate transaction value in excess of US\$228 billion. Recent
21 representative UBS Warburg transactions include advising Devon Energy Corp. on the US\$3.5
22 billion and US\$4.6 billion acquisitions of Mitchell Energy & Development Corp. and Anderson
23 Exploration, Ltd., respectively, advising Allianz AG on the US\$21.4 billion acquisition of
24 Dresdner Bank AG and advising Anglo American, plc on the US\$19.3 billion acquisition of
25 DeBeers.
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1 4. In addition, UBS Warburg was ranked 6th in US bookrun common stock
2 underwritings in 2001 with 48 transactions representing issuances totaling in excess of US\$11
3 billion. Also, in 2001, UBS Warburg was ranked 6th globally in global bond underwriting with
4 in excess of US\$43 billion in issuances. Recent representative UBS Warburg common stock
5 transactions include acting as bookrunner on the following offerings: US\$3.3 billion for Sprint
6 Corp., the US\$2.9 billion IPO of Statoil ASA, US\$1.0 billion for Echostar Communications
7 Corp. and US\$5.1 billion for Vodafone AG. Recent representative UBS Warburg debt
8 transactions include acting as bookrunner on the following offerings: US\$1.75 billion for GE
9 Capital, US\$5.0 billion for Ford Credit, US\$5.0 billion for Sprint Corp. and US\$6.0 billion for
10 GMAC Financial Services.
11

12 5. UBS Warburg has been retained by the California Public Utilities
13 Commission (the "Commission") to serve as financing and capital markets arranger for the debt
14 and equity securities to be issued, and bank financing to be entered into, by Pacific Gas and
15 Electric Company ("PG&E") pursuant to the Commission's Plan of Reorganization, dated
16 May 17, 2002 (the "Commission's Plan"), under chapter 11 of the Bankruptcy Code for PG&E,
17 on the terms and conditions of that certain Engagement Letter, dated as of June 10, 2002 (the
18 "Engagement Letter"). Pursuant to the Engagement Letter, UBS Warburg has agreed to provide
19 the Commission with financial and market-related advice and assistance with respect to the
20 financing of the Commission's Plan, which may include assisting the Commission in analyzing,
21 structuring, negotiating and effecting any financing by PG&E of a plan of reorganization. To do
22 that, UBS Warburg has assembled a team composed of individuals from the following groups:
23 Global Energy and Power, Restructuring, Strategic Advisory, Fixed Income Capital Markets and
24 Equity Capital Markets.
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1 6. As one of the preeminent investment banking and financial advisory firms
2 in the world, UBS Warburg has wide-ranging expertise in the areas of utilities, global power,
3 energy and corporate restructurings.

4 7. UBS Warburg's Global Power Group consists of forty-eight (48)
5 professionals in six (6) countries with particular expertise in debt underwritings and mergers and
6 acquisitions. As a leader in utility and power debt underwriting, UBS Warburg ranked 4th
7 globally from 1998 to 2001 with over 300 transactions representing in excess of US\$140 billion
8 in issuances. Recent UBS Warburg transactions include acting as bookrunner or lead-manager
9 for the following transactions: US\$1.0 billion for Duke Energy Corp., US\$1.35 billion and
10 US\$1.7 billion for DTE Energy Company, US\$700 million for SCANA Corp., US\$1.0 billion
11 for American Electric Power Company, Inc., and US\$1.1 billion for The Williams
12 Companies, Inc.
13

14 8. In addition, UBS Warburg ranked 2nd globally in managed equity
15 issuances in the utility and power sector from 1998 through June 12, 2002, with in excess of
16 US\$35 billion in issuances. Recent UBS Warburg transactions include acting as sole or joint
17 bookrunner on offerings for major utilities including the following: US\$387 million concurrent
18 equity/mandatory convertible debt for DTE Energy Company, US\$357 million for TECO
19 Energy, Inc., US\$287 million for UtiliCorp United, Inc., US\$153 million for Allete, Inc. and the
20 € 1.9 billion IPO of Snam Rete Gas, SpA in Italy. Moreover, UBS Warburg has acted as senior
21 co-manager or co-manager in several recent transactions including the following: US\$950
22 million concurrent equity/mandatory convertible debt for American Electric Power Company,
23 Inc., US\$712 million for Southern Company, US\$208 for TECO Energy, Inc., US\$156 for Black
24 Hills Corp. and the US\$1.56 billion IPO of Reliant Resources, Inc.
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1 9. Along with its debt and equity underwriting experience, UBS Warburg is a
2 leading M&A advisor in the power sector, having advised on over 160 transactions globally
3 since 1990 representing a combined value of over US\$300 billion. UBS Warburg ranked 4th
4 globally from 1998 to 2001 in utility advisory with 52 transactions, representing in excess of
5 US\$90 billion of transaction value. In terms of domestic M&A transactions, UBS Warburg has
6 advised on 5 of the last 11 utility M&A announced transactions, more than any other investment
7 bank.

8 10. In addition to its energy and power sector expertise, UBS Warburg is a
9 leader in financial restructurings and distressed finance. UBS Warburg is comprised of
10 professionals with extensive experience in providing financial advice, including restructuring,
11 M&A, capital markets, and transactional advice, to financially troubled companies. The firm
12 also has extensive experience in assisting troubled companies raise financing. With a
13 restructuring staff of 36 professionals, UBS Warburg considers itself one of the few, if not the
14 only, major full-service securities firms with a major restructuring practice. Since the late
15 1980's, UBS Warburg professionals have participated in over 125 financial restructurings
16 involving approximately \$120 billion in debt securities. In addition, professionals in UBS
17 Warburg's restructuring group have extensive experience in consent solicitations, exchange
18 offers, debt-tender offers, debt financings and refinancings, rights offerings, chapter 11
19 reorganizations and international reorganizations. Recent completed transactions include (i)
20 Telesystems International Wireless, Inc., in which UBS Warburg completed a \$547 million high
21 yield exchange offer and a \$776 million recapitalization, (ii) Advantica Restaurant Group, Inc.,
22 in which UBS Warburg served as a dealer manager in an exchange offer for a portion of the
23 Company's \$530 million in outstanding senior notes and (iii) Genesis Health Ventures, Inc. with
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1 \$1.7 billion in indebtedness. UBS Warburg is currently involved in over 20 restructuring
2 transactions involving over \$50 billion in indebtedness.

3 11. For UBS Warburg to act as the Commission's financing arranger, it must
4 have access to detailed financial information about PG&E, including forward-looking
5 information that is normally provided to underwriters and lenders. In addition, UBS Warburg
6 will require reasonable access to PG&E's executives and other employees to ask questions, test
7 assumptions and generally become familiar with PG&E's financial condition, results of
8 operations and prospects. In my opinion, without access to current financial and other
9 information pertaining to PG&E's business, UBS Warburg will be unable to raise the financing
10 required under the Commission's Plan and the integrity of the information provided to investors
11 will be compromised.

12
13 12. UBS Warburg has negotiated the terms of its Engagement Letter in good
14 faith. The transaction fees set forth therein are customary for UBS Warburg for transactions of
15 this size and complexity. Similarly, the indemnification provided for in Section 10 of the
16 Engagement Letter and Exhibit A attached thereto and incorporated therein by reference also is
17 customary given the nature of the services to be provided by UBS Warburg.

18
19 13. Because of the Commission's inability to make the payments required
20 under the Engagement Letter, UBS Warburg would be unable to make the substantial
21 commitment of resources necessary to accept the engagement without assurance of an acceptable
22 alternative source of payment.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 21 day
of June 2002, at New York, New York.

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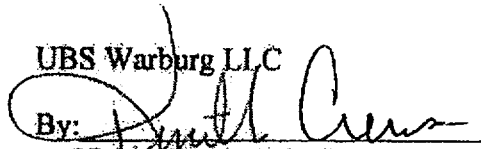
UBS Warburg LLC
By: 
Name: Kenneth S. Crews
Title: Vice Chairman

EXHIBIT D

1 GARY M. COHEN, SBN 117215
AROCLES AGUILAR, SBN 94753
2 MICHAEL M. EDSON, SBN 177858
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Telephone: (212) 373-3000
9 Facsimile: (212) 757-3990

10 Attorneys for the California Public Utilities Commission

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

14 In re

Case No. 01-30923 DM

15 PACIFIC GAS AND ELECTRIC COMPANY,
a California corporation,

Chapter 11 Case

16 Debtor.

Date: [To Be Set]
Time: [To Be Set]
Place: 235 Pine Street, 22nd Floor,
San Francisco, California

17 Federal I.D. No. 94-0742640
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19
20 **DECLARATION OF SKIP VICTOR**
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1 SKIP VICTOR declares as follows under penalty of perjury:

2 1. I am a senior managing director and co-founder of Chanin Capital Partners, LLC
3 ("Chanin"). I have held this position for over 5 years. Prior to joining Chanin, I was a Vice
4 President in the Corporate Finance Department of Drexel Burnham Lambert Incorporated. I
5 have been involved in restructuring numerous entities, as advisor to both various creditor or
6 equity constituencies, including Orange County, Regal Cinemas, Home Interiors, The
7 Washington Group, Nextel International, LLS Corporation, ICF Kaiser, Reeves Corporation,
8 Stone and Webster, HQ Global, ICS Communications and Ames Department Stores. I have also
9 served as a member of the board of directors of Bucyrus International, Spectravision, The
10 Washington Group, and BDK Holdings.

11 2. Founded in 1990, Chanin is an internationally recognized financial advisory firm
12 with significant experience in the financial restructuring of over-leveraged businesses. Chanin,
13 which has offices in New York and Los Angeles, specializes in complex corporate restructurings
14 and has one of the largest financial restructuring practices, with over \$75 billion in transaction
15 value experience, more than 50 dedicated professionals, and over 150 transactions consummated.
16 Chanin's expertise includes valuations, mergers and acquisitions, capital structure analyses, new
17 capital raising, plan of reorganization development, and debtor-creditor negotiations.

18 3. Chanin has been retained by the California Public Utilities Commission (the
19 "Commission") to serve as the Commission's financial advisor in connection with this chapter
20 11 case. As the Commission's financial advisor, Chanin has been actively involved in the
21 formulation and implementation of the Commission's Plan of Reorganization for Pacific Gas &
22 Electric Company, dated May 17, 2002 (the "Commission's Plan"). As part of that process,
23 Chanin has taken the lead in contacting and negotiating with various sources for the debt and
24 equity financing required under the Commission's Plan.

25 4. I have reviewed and am familiar with the terms and conditions of that certain
26 Engagement Letter between the Commission and UBS Warburg LLC ("UBS Warburg"), dated
27 as of June 10, 2002 (the "Engagement Letter"). I have personal knowledge of the facts stated
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1 herein except as to matters stated upon information and belief, and as to those matters, I believe
2 them to be true. If called upon to testify, I could and would competently do so.

3 5. Before agreeing to the Engagement Letter with UBS Warburg, the Commission
4 and Chanin met with other global banking and financial institutions and investors who expressed
5 interest in raising or providing some or all of the financing required under the Commission's
6 Plan. Specifically, the Commission received indications of interest to underwrite all of the new
7 capital required to be raised by Pacific Gas and Electric Company ("PG&E" or the "Debtor")
8 under the Commission's Plan from one other global banking institution and an indication of
9 interest from a global equity player to arrange for the equity financing required under the
10 Commission's Plan. In addition, the Commission received indications of interest from multiple
11 parties in investing in both the debt and equity components of the Commission's Plan.

12 6. Of those who indicated interest, the Commission proceeded to the detailed term
13 sheet phase with UBS Warburg and one other financing source, and decided upon UBS Warburg
14 after extensive negotiations. That process, which has lasted almost three months, has led the
15 Commission to engage UBS Warburg to arrange for the financing required under the
16 Commission's Plan in accordance with the terms and conditions set forth in the Engagement
17 Letter. The Commission chose UBS Warburg because of its size and experience, expertise in the
18 global power and energy industry, degree of commitment to the Commission's Plan and world-
19 class reputation.

20 7. The Engagement Letter is the product of extensive arms'-length negotiations
21 between the Commission and UBS Warburg. Prior to the Commission's entry into the
22 Engagement Letter, Chanin reviewed the fee arrangements in a number of underwriting
23 transactions entered into both in and outside of the utility sector. Specifically, Chanin reviewed
24 approximately 80 utility debt and equity underwritings that have occurred in the last ten years,
25 three of which involved \$1 billion plus offerings. The average underwriting fee for equity
26 transactions over \$1 billion equaled about 5% of the offering amount.

1 8. In view of the foregoing, I believe that the range of fees set forth in the
 2 Engagement Letter for UBS Warburg's commitment to raise the debt and equity financing
 3 contemplated by the Commission's Plan (1 to 4%) is fair and reasonable, particularly given the
 4 size and complexity of such financings. In addition, I believe that the other fees required to be
 5 paid under the Engagement Letter are also reasonable.

6 9. Similarly, the indemnification provisions contained in the Engagement Letter and
 7 in the Indemnification Agreement attached thereto as Exhibit A and incorporated therein by
 8 reference, are reasonable and customary given the services to be provided by UBS Warburg.
 9 This is primarily because UBS Warburg will have to rely on information supplied by PG&E in
 10 its discussions with potential financing sources. In my experience, it is typical for underwriters
 11 and arrangers, like UBS Warburg, to be protected against damages they suffer that result from
 12 their detrimental reliance on such information. Also, in my experience, investment banks
 13 providing services similar to those to be provided by UBS Warburg would typically refuse to
 14 work absent such indemnification.

15 10. Finally, to do its work under the Engagement Letter, UBS Warburg will need
 16 access to PG&E's financial and other information pertaining to its business and to its executives
 17 and employees. The Commission previously has requested that PG&E establish at its own
 18 expense a "data room" of due diligence materials for use in connection with the financings
 19 required under the Commission's Plan. To date, the Commission's requests have been denied by
 20 PG&E.

21 I declare under penalty of perjury that the foregoing is true and correct. Executed this
 22 21 day of June 2002, at Los Angeles, California

23
 24 
 25 SKIP VICTOR