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50-275/323

Special Counsel for Debtor in Possession
PACIFIC GAS AND ELECTRIC COMPANY

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re

PACIFIC GAS AND ELECTRIC
COMPANY, a California corporation,

Debtor.

Federal I.D. No. 94-0742640

Case No.: 01-30923 DM

Chapter 11 Case

Date: October 29, 2002
Time: 1:30 p.m.
Judge: Hon. Dennis Montali
Dep't: 235 Pine Street, 22nd Floor
San Francisco, California

**HELLER EHRMAN WHITE & McAULIFFE LLP'S FOURTH INTERIM FEE
APPLICATION FOR ALLOWANCE AND PAYMENT OF COMPENSATION
AND REIMBURSEMENT OF EXPENSES FOR THE PERIOD
APRIL 1, 2002, THROUGH JULY 31, 2002**

Pursuant to the Order Establishing Interim Fee Application and Expense
Reimbursement Procedure, entered July 26, 2001, and amended November 8, 2001 ("Order
re Fee Applications"), Heller Ehrman White & McAuliffe LLP ("Heller Ehrman," or the
"Firm") files this Fourth Interim Fee Application (the "Application") for Allowance and
Payment of Compensation and Reimbursement of Expenses for the Period April 1, 2002,
Through July 31, 2002 (the "Application Period").

Heller
Ehrman
White &
McAuliffe LLP

HELLER EHRMAN WHITE & McAULIFFE LLP'S FOURTH INTERIM FEE APPLICATION
CASE NO.: 01-30923 DM

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1 I. RETENTION

2 1. Heller Ehrman is Special Counsel to Pacific Gas and Electric Company,
3 debtor and debtor-in-possession in the above-referenced bankruptcy case ("PG&E" or the
4 "Debtor"). Heller Ehrman's retention as Special Counsel was authorized by this Court's
5 Order Authorizing Debtor in Possession to Employ Heller Ehrman White & McAuliffe LLP
6 as Special Counsel, entered June 4, 2001 (the "June 4, 2001, Order"), effective *nunc pro*
7 *tunc* to April 6, 2001.

8 II. SUMMARY OF FEES AND EXPENSES REQUESTED

9 2. The Firm billed a total of \$3,127,452.34 in fees and expenses during the
10 Application Period. The total fees represent 10,727.40 hours expended during the
11 Application Period. Those fees and expenses break down as follows:

12

Period	Fees	Expenses	Total
4/01/02 to 7/31/02	\$2,939,674.20	\$187,753.64	\$3,127,427.84

13
14

15 3. Pursuant to the Order re Fee Applications ¶ 6, Heller Ehrman seeks allowance
16 of interim compensation in the total amount of \$3,127,427.84.

17 4. To date, the Firm is not owed any amounts except those identified in
18 paragraphs 2 and 3 above.¹

19 III. PRIOR COMPENSATION

20 5. As of the date of filing this Application, Heller Ehrman has received
21 compensation for services rendered and reimbursement for expenses incurred since the date
22 of petition (April 6, 2001) as follows:

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26 ¹ As indicated in paragraph 5 below, of the \$3,127,427.84 owed to Heller Ehrman for
27 fees and expenses incurred during the Application Period, PG&E already has paid Heller
28 Ehrman \$2,059,317.05 (85% of fees and 100% of expenses for April 2002, May 2002 and
June 2002; no payment has yet been received for July 2002. The amount still owing to
Heller Ehrman is \$1,068,135.29.

Application Period	Amount Applied For	Description	Amount Paid
4/6/01-7/31/01 (first post-petition interim fee application period)	\$2,264,794.01	100% of fees and 100% of expenses	\$2,246,327.81 ²
8/1/01-11/30/01 (second post-petition interim fee application period)	\$2,251,673.88	100% of fees and 100% of expenses	\$2,231,752.48 ³
12/1/01-3/31/02 (third post-petition interim fee application period)	\$2,477,438.24	100% of fees and 100% of expenses	\$2,477,438.24
4/1/02-5/30/02 (Apr. CSA period)	\$ 711,657.73	85% of fees and 100% of expenses	\$ 711,657.74
5/1/02-5/31/02 (May CSA period)	\$ 818,698.97	85% of fees and 100% of expenses	\$ 818,698.97
6/1/02-6/30/02 (June CSA period)	\$ 528,960.34	85% of fees and 100% of expenses	\$ 528,960.34
7/1/02-7/31/02 (July CSA period)	\$ 629,515.16	85% of fees and 100% of expenses	\$0
Total	\$9,682,738.33		\$9,014,835.58

6. On December 19, 2000, PG&E paid a retainer to Heller Ehrman in the amount of \$350,000. Pursuant to written agreement between the parties dated December 19, 2000,

² The amount paid reflects a disallowance of \$18,466.20 in fees. *See* Order Approving Heller Ehrman White & McAuliffe LLP's First Interim Fee Application for Allowance and Payment of Compensation and Reimbursement of Expenses for the Period April 6, 2001, Through July 31, 2001 (Nov. 21, 2001); Memorandum Decision Regarding Applications for Interim Compensation of Professionals (Dec. 12, 2001).

³ The amount paid reflects a disallowance of \$19,921.40 in fees for certain paralegal charges. *See* Order Approving Heller Ehrman White & McAuliffe LLP's Second Interim Fee Application ¶ 1 (Feb. 27, 2002).

1 the retainer is not to apply to current billings in the ordinary course, but instead is to apply
2 to Heller Ehrman's unpaid fees and expenses in the event that PG&E fails to make payment
3 in the ordinary course. By written agreement dated April 5, 2001, the parties modified that
4 arrangement to authorize Heller Ehrman to apply the retainer to payment of unpaid pre-
5 petition fees and expenses on matters that are subject to an hourly billing arrangement. The
6 foregoing arrangement was approved by this Court in its June 4, 2001 Order (approving
7 Application of Debtor in Possession for Authority to Employ Heller Ehrman White &
8 McAuliffe LLP as Special Counsel (Apr. 17, 2001)); *see id.* ¶¶ 9-10; Declaration of Marie
9 L. Fiala ¶ 9 (Apr. 8, 2001). As of the date of submission of this Application, Heller Ehrman
10 has applied \$153,148.07 of the retainer to pay for a portion of its (i) pre-petition fees and
11 expenses on hourly rate engagements (\$136,622.37) and (ii) fees and costs incurred on the
12 petition date on hourly rate engagements (\$16,952.84). The current retainer balance is
13 \$196,851.93.

14 7. PG&E and Heller Ehrman are parties to a contingent fee agreement (entered
15 into on January 1, 1993) (the "Contingent Fee Agreement") pertaining to Heller Ehrman's
16 representation of PG&E in pursuing insurance recoveries from a number of insurance
17 companies for losses incurred by PG&E as a result of environmental liabilities. The terms
18 of the Contingent Fee Agreement are described in the Supplemental Application of Debtor
19 in Possession for Authority to Employ Heller Ehrman White & McAuliffe LLP as Special
20 Counsel (Insurance Coverage — Contingent Fee), filed May 18, 2001, and approved by this
21 Court in its June 4, 2001 Order. Heller Ehrman does not seek in this Application
22 compensation or expenses in connection with the contingent fee matter, but instead expects
23 to seek compensation and expenses with respect to that matter by a separate fee application
24 to be filed at an appropriate time.

25 IV. CASE STATUS

26 8. Heller Ehrman relies on the description of the status of the bankruptcy case
27 provided by PG&E's general bankruptcy counsel, Howard Rice Nemerovski Canady Falk &
28 Rabkin.

1 V. SUMMARY OF SERVICES PERFORMED

2 9. Heller Ehrman's services to PG&E during the Application Period are
3 described in detail⁴ in the billing statements attached to the accompanying Time Records
4 Exhibit of Special Counsel Heller Ehrman White & McAuliffe LLP for the Period April 1,
5 2002, Through July 31, 2002 ("Time Records Exhibit").

6 10. During the Application Period, Heller Ehrman has provided legal services to
7 PG&E on a number of matters. The bulk of those services has continued to involve efforts
8 to obtain rate relief for PG&E from governmental agencies or the courts in the wake of the
9 California energy crisis that caused PG&E's financial condition to deteriorate and
10 precipitated this bankruptcy filing. Heller Ehrman's services have included advice,
11 counseling, and representation regarding regulatory, rate setting and rate refund matters, and
12 litigation related to those and related subject areas. Heller Ehrman has represented PG&E in
13 connection with proceedings before the Federal Energy Regulatory Commission ("FERC")
14 addressing the California energy market and directly affecting PG&E. Heller Ehrman has
15 provided counseling, representation and assistance to PG&E in connection with proceedings
16 at the California Public Utilities Commission ("CPUC") involving PG&E. Heller Ehrman
17 also has represented PG&E in connection with a lawsuit against the Commissioners of the
18 CPUC, which seeks to require the CPUC to comply with federal law and allow PG&E to
19 recover in its retail rates the wholesale electricity costs it incurred in meeting its state-
20 imposed obligation to serve its customers. If PG&E succeeds on its claims as pleaded, that

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23 ⁴ In accordance with Heller Ehrman's professional obligations to its client, Heller
24 Ehrman's time records have been edited to prevent disclosure of confidential information,
25 including information protected by the attorney-client privilege and the work product
26 doctrine. Such information includes, but is not limited to, the specific subject matter of
27 confidential attorney-client or attorney work product discussions; the identity and work
28 product of nontestifying expert consultants; and the exact nature of the issues and theories
that have been the subject of Heller Ehrman's legal research, analysis and advice to PG&E
in written or oral form. Heller Ehrman submits these time records pursuant to order of the
Bankruptcy Court and without any waiver of any privilege, confidentiality protection or
privacy right that might apply to the information contained therein.

lawsuit ultimately could bring billions of dollars into PG&E's bankruptcy estate through increased retail rate revenues. Heller Ehrman also has provided bankruptcy-related advice and services to PG&E as an adjunct to its other services.⁵

11. Consistent with the Court's Guidelines for Compensation of Professionals (the "Fee Guidelines"), Heller Ehrman's services during the Application Period have been recorded under 22 separate internal matter numbers. Billing statements for each of those matters are attached to the accompanying Time Records Exhibit. For each matter, the billing statements set forth, *inter alia*, the total number of hours recorded by each attorney and paralegal, the timekeeper's hourly billing rate(s), and the fees requested. A narrative description of each of those matters follows.

VI. NARRATIVE DESCRIPTION OF SERVICES

12. Matter No. 45: Utility General Insurance Advice. Hours spent: 32.80; fees sought: \$11,736.10; expenses sought: \$182.78. This matter is used to record time billed in connection with insurance advice and services provided by Heller Ehrman to PG&E. This matter is separate from and independent of the *PG&E v. Lexington Insurance Company et al.* insurance coverage action (Matter No. 11), which is subject to a separate contingent fee agreement. *See supra* ¶ 7.

13. During the Review Period, Heller Ehrman provided advice concerning PG&E's self-insured workers' compensation program; assisted PG&E in responding to a demand by the California Department of Toxic Substances Control ("DTSC") to meet certain insurance requirements for insolvent operators of hazardous waste facilities; provided advice regarding third-party surety bond issues; and assisted PG&E in responding to a claim against PG&E by an employee benefit program.

14. We anticipate providing additional services to PG&E in response to periodic requests for insurance-related advice.

⁵ See June 4, 2001, Order at p. 2 (authorizing Heller Ehrman to provide "bankruptcy-related legal services as an adjunct to the other legal services to be performed by Heller Ehrman").

1 15. **Matter No. 54: Modesto Irrigation District v. Destec. Hours spent: 3.50;**
2 **fees sought: \$1,687.00; expenses sought: \$40.20.** This matter is used to record time
3 billed in providing legal advice to PG&E in connection with a lawsuit filed against PG&E
4 by the Modesto Irrigation District ("MID"), alleging that PG&E violated the antitrust laws
5 by refusing to accede to MID's request for interconnection service between PG&E's
6 transmission system and MID's facilities. The case was filed on August 3, 1998, and was
7 dismissed with prejudice on August 20, 1999. Plaintiff appealed the dismissal to the Ninth
8 Circuit Court of Appeals. Appellate briefing was concluded on March 31, 2000, and oral
9 argument was heard on the appeal on March 15, 2001. Thus, at the time that PG&E filed
10 the instant bankruptcy petition, the appeal had been fully briefed and argued and awaited
11 resolution by the Ninth Circuit. As a result of the bankruptcy filing by PG&E, the MID
12 action was initially stayed pursuant to the automatic stay provisions of Section 362(a) of the
13 Bankruptcy Code. The parties thereafter stipulated that plaintiff would seek relief from the
14 automatic stay for the limited purpose of resolving the appeal under submission in the Ninth
15 Circuit, including any rehearing requests or certiorari petitions. This Court granted
16 plaintiff's motion for relief from the stay on those terms and the Ninth Circuit ordered that
17 the case be resubmitted on August 3, 2001.

18 16. During the Application Period, PG&E asked Heller Ehrman to provide
19 occasional legal advice on issues pertaining to the legal proceedings and to PG&E's
20 business dealings in matters that relate to the legal proceedings. Heller Ehrman billed only a
21 small amount of time to this matter for such advice during the Application Period.

22 17. **Matter No. 63: California Market Failures — FERC Docket EL00-95**
23 **and Related Dockets/Matters. Hours spent: 3,079.10; fees sought: \$798,017.80;**
24 **expenses sought: \$74,392.85.⁶** This matter is used to record time billed in connection with
25

26 ⁶ As originally submitted to PG&E, Heller Ehrman's July bill for Matter No. 63 did
27 not include the following entry for H S Kim dated July 31, 2002: "Draft surrebuttal
28 testimony" (8.00 hrs at \$329/hr = \$2,632.00), which originally was included on the July bill
for Matter No. 86. Heller Ehrman subsequently prepared and provided to PG&E revised

(Footnote continued)

1 the principal FERC proceeding addressing failures in the California electric market. That
2 proceeding, FERC Docket EL00-95, was brought on August 2, 2000, by San Diego Gas and
3 Electric Company ("SDG&E") against all sellers in the California wholesale electric
4 markets, seeking FERC intervention in the markets. PG&E intervened in the proceeding,
5 seeking reform of those markets, and monetary relief and refunds based on overcharges by
6 sellers. Depending on the outcome of this litigation, it is expected that PG&E may receive
7 refunds of a billion dollars or more for overcharges in California electric markets.

8 18. Heller Ehrman has been retained since prior to the petition date to provide
9 extensive legal services to PG&E in connection with this proceeding. Heller Ehrman has
10 provided legal advice, research and strategy input; prepared and filed numerous briefs and
11 other papers; and appeared at hearings on behalf of PG&E. Heller Ehrman prepared
12 extensive papers and advocated on PG&E's behalf concerning prospective price mitigation
13 relief affecting PG&E which has been the subject of FERC orders issued November 1, 2000,
14 December 15, 2000, April 26, 2001, June 19, 2001, December 19, 2001, and May 15, 2002.
15 Heller Ehrman has likewise represented PG&E in seeking refunds for overcharges by
16 sellers, submitting numerous pleadings which led to refund orders issued by the FERC on
17 July 25, 2001, December 19, 2001, and May 15, 2002. Refund issues have been set for
18 hearing at FERC, and Heller Ehrman is trial counsel for PG&E. Heller Ehrman has
19 managed extensive discovery on refund issues, and represented PG&E at a FERC trial on
20 refund issues in March 2002. During the Application Period, Heller Ehrman engaged in
21 extensive briefing of issues that arose in the March 2002 hearing, and managed extensive
22 discovery and testimony preparation to prepare for a second trial on refund issues held in
23 August 2002.

24 19. PG&E has been and will continue to be an active participant in numerous
25 other proceedings related to FERC Docket ER00-95, in which Heller Ehrman has been

26
27 July bills for Matter Nos. 63 and 86 reflecting a transfer of the foregoing entry from Matter
28 No. 86 to Matter No. 63. The figures above reflect the corrected hours and fees for Matter
63. The accompanying Time Records Exhibit contains the corrected bills.

1 retained to provide legal services. For example, during the Application Period, Heller
2 Ehrman represented PG&E in a FERC proceeding relating to the legality of several hundred
3 million dollars in "neutrality adjustment charges" that were assessed against PG&E in
4 conjunction with PG&E's electric power purchases, and represented PG&E in numerous
5 FERC proceedings relating to the justness and reasonableness of charges for long-term
6 power contracts entered into during 2000-2001.

7 20. We anticipate providing extensive continuing legal services to PG&E in this
8 matter.

9 21. **Matter No. 64: Federal Filed Rate Case. Hours spent: 3,978.60; fees**
10 **sought: \$1,113,815.20; expenses sought: \$63,821.56.⁷** This matter is used to record time
11 billed in providing legal advice and representation to PG&E in a lawsuit filed by PG&E
12 against the Commissioners of the CPUC. The lawsuit seeks to require the CPUC to comply
13 with federal law and allow PG&E to recover in its retail rates the wholesale electricity costs
14 it incurred in meeting its state-imposed obligation to serve its customers. The lawsuit stems
15 from the electricity market crisis that started in the summer of 2000, when the wholesale
16 cost of the electricity that PG&E purchased for delivery to its retail customers experienced
17 unanticipated and massive increases. Although PG&E's wholesale costs rose dramatically,
18 PG&E's retail rate revenues were frozen pursuant to AB 1890, California's electricity
19 market restructuring statute. Between June 2000 and March 31, 2001, PG&E's wholesale
20 costs exceeded the amounts available in PG&E's frozen retail rates to pay for such costs by

21 _____
22 ⁷ The foregoing hours and fees reflect a reduction in amounts shown in the original
23 May timesheet for Matter No. 64 (attached to the Time Records Exhibit), as follows:

- 24 • May 3, 2002, T E Reiber entry "return travel from [court hearing in] San
25 Francisco to Los Angeles (2.4)" has been reduced to 2.0 hours to comply with the
Court's December 12, 2001, Order, resulting in a reduction of \$142.40.
- 26 • Fees for the time recorded by three Heller Ehrman associates in attending a May
27 24, 2002, hearing on cross-motions for summary judgment — C E Gould (3.3
28 hours = \$729.30); H E Ware (4 hours = \$1,260.00); and W Lee (3.3 hours =
\$610.50) — are not being requested, resulting in a reduction of \$2,599.80.

1 approximately \$9.2 billion. As a result of the CPUC's refusal to allow PG&E to recover its
2 wholesale costs in retail rates, PG&E amassed crippling debt, ultimately leading PG&E to
3 file the instant bankruptcy petition on April 6, 2001.

4 22. PG&E retained Heller Ehrman in the summer of 2000 to analyze the legal
5 issues and prepare litigation to challenge the CPUC's actions denying recovery to PG&E of
6 its ever-mounting wholesale electricity costs. In November 2000, Heller Ehrman filed a
7 lawsuit on PG&E's behalf in the United States District Court for the Northern District of
8 California alleging that under well-established principles of federal preemption, including
9 the "filed rate doctrine,"⁸ and other legal theories PG&E is entitled to recover its wholesale
10 transmission and power purchase costs in its retail rate revenues. That case, *PG&E v. Lynch*
11 *et al.*, Civil Action No. C 00 4128 (SBA) (N.D. Cal.), subsequently was transferred to the
12 United States District Court for the Central District of California, where a virtually identical
13 lawsuit by Southern California Edison Company was pending. PG&E filed an amended
14 complaint in the United States District Court for the Central District of California on
15 February 15, 2001, entitled *PG&E v. Lynch et al.*, Civil Action No. CV 01-1083-RSWL
16 (SHx) (C.D. Cal.).

17 23. Heller Ehrman provided legal representation to PG&E in prosecuting that
18 lawsuit, including consultation and advice, preparing and filing pleadings and motion
19 papers, appearances at court hearings and preparing for potential discovery.

20 24. On May 2, 2001, the court dismissed PG&E's lawsuit on ripeness grounds
21 without prejudice to refile. On August 6, 2001, Heller Ehrman refiled PG&E's lawsuit
22 against the CPUC Commissioners in the United States District Court for the Northern
23 District of California. That lawsuit, *PG&E v. Lynch, et al.*, Case No. C 01-03023 VRW
24
25

26 ⁸ Under the "filed rate doctrine," a wholesale rate paid by a utility pursuant to a
27 federally-approved tariff is binding on a state utilities commission for retail rate-setting
28 purposes, and a state must allow a utility to recover in its retail rates the wholesale costs
paid by the utility pursuant to the federally-approved tariff.

1 (N.D. Cal.) (the "Filed Rate Lawsuit"), currently is pending before the Hon. Vaughn R.
2 Walker.

3 25. During the Application Period, Heller Ehrman provided a wide range of legal
4 services to PG&E in its role as outside counsel representing PG&E in litigating its claims
5 against the CPUC Commissioners in the Filed Rate Lawsuit. Heller Ehrman conducted
6 extensive legal research and analysis regarding PG&E's claims; engaged in discovery
7 activities, including preparation of Initial Disclosures, affirmative discovery and responses
8 to defendants' discovery requests, and review of documents for production; prepared
9 extensive briefing and declarations for and participated in a hearing on cross-motions for
10 summary judgment; engaged in meet and confer activities and prepared opposition briefing
11 in connection with motions to quash a subpoena of audit materials served by PG&E;
12 communicated extensively with PG&E regarding strategy issues; and monitored
13 developments in other cases and in the energy industry bearing on PG&E's claims.

14 26. On July 25, 2002, the Court entered an order denying motions to dismiss filed
15 by defendants and intervenor The Utility Reform Network ("TURN"), as well as motions
16 for summary judgment that had been filed by all parties (the "July 25 Order"). In the July
17 25 Order, the Court also set a case management conference for August 16, 2002, at which it
18 adopted a pretrial and trial schedule stipulated to by the parties. Pursuant to that schedule,
19 the current fact discovery cutoff is December 20, 2002, and trial is scheduled for June 9,
20 2003.

21 27. On August 23, 2002, defendants filed a notice of appeal of the July 25 Order
22 based on the Eleventh Amendment and the Johnson Act, 28 U.S.C. § 1342. On September
23 4, 2002, defendants filed a motion to stay proceedings before Judge Walker pending their
24 appeal, and PG&E filed a motion for certification that defendants' appeal is frivolous and
25 that no stay should be imposed. A hearing on the foregoing motions is scheduled for
26 September 19, 2002.

27 28. Heller Ehrman anticipates performing substantial additional work for PG&E
28 on the Filed Rate Lawsuit in the coming months, including continuing extensive trial

1 preparations; representing PG&E in discovery activities, including depositions and
2 document production; representing PG&E in connection with defendants' appeal of the July
3 25 Order, including motions and briefing in the Ninth Circuit; continuing to conduct legal
4 research and analysis regarding PG&E's claims; and continuing to provide sustained advice
5 and counseling to PG&E with respect to the litigation.

6 **29. Matter No. 66: Claims re Missing London Markets. Hours spent:**
7 **133.20; fees sought: \$17,746.90; expenses sought: \$531.72.** This matter is an offshoot of
8 the *PG&E v. Lexington Insurance Company* insurance coverage case, Matter No. 11.
9 Matter No. 11, itself, is subject to a separate contingent fee agreement. *See supra* ¶ 7.
10 Matter No. 66 is used to record time billed in assisting PG&E in an ongoing effort to obtain
11 recovery from its London broker for certain missing London market insurance policies that
12 PG&E was unable to prove in the litigation. English law requires London market brokers to
13 retain evidence of the material terms of the policies they secure for a policyholder, including
14 the original of a document that is referred to as the "placing slip." In this instance, the
15 broker failed to provide this and other records with the result that PG&E was not able to
16 collect from the unknown providers of this missing coverage. Heller Ehrman coordinates
17 with English counsel retained by PG&E to pursue this claim. During the Application
18 Period, Heller Ehrman continued to search for and review missing broker documents, as
19 well as prepare documents to be forwarded to London.

20 **30. Matter No. 67: Creditworthiness Docket — FERC Docket ER01-889.**
21 **Hours spent: 56.20; fees sought: \$18,775.70; expenses sought: \$1,273.50.** This docket
22 addresses, among other things, the issue of whether PG&E may be held liable for electricity
23 procured for PG&E's customers after PG&E no longer had the financial resources to assure
24 that it could pay for such power. In January 2001, PG&E became uncreditworthy under
25 existing tariffs, necessitating that an alternative buyer be found to procure power for
26 PG&E's customers. At about the same time, the California Department of Water Resources
27 ("DWR") was empowered to purchase power on behalf of California's cash-deprived
28 utilities. This proceeding specifically involves a January 4, 2001, filing by the ISO to

1 amend its FERC tariff to relax the creditworthiness provisions so that certain entities,
2 including PG&E, could continue buying electric power from third parties despite the fact
3 that those entities do not meet the tariff's creditworthiness requirements. FERC refused to
4 amend the tariff, leaving in place a requirement that power purchases must be made by a
5 creditworthy entity. In a series of subsequent orders, culminating in an order on
6 November 7, 2001, FERC ordered that DWR, not PG&E, should be billed for any third-
7 party power transactions on or after January 17, 2001. The November 7, 2001 Order was
8 affirmed on rehearing on March 27, 2002.

9 31. Heller Ehrman has been retained since prior to the petition date to represent
10 PG&E in connection with the FERC creditworthiness proceedings. During the Application
11 Period, Heller Ehrman has provided continuing legal representation at FERC on
12 creditworthiness issues, and has provided advice to PG&E concerning the interpretation of
13 the orders in the FERC creditworthiness docket and the impact of the FERC orders on
14 orders issued by the California Public Utilities Commission. Additionally, Heller Ehrman
15 has assisted in negotiations with DWR concerning these payment issues. Heller Ehrman's
16 efforts are intended, *inter alia*, to prevent PG&E from being forced to spend money that
17 otherwise would accrue to the estate.

18 32. We anticipate performing additional work for PG&E as these matters proceed.

19 33. **Matter No. 68: Qualifying Facility ("QF") Proceedings/Issues. Hours**
20 **spent: 38.40; fees sought: \$12,320.10; expenses sought: \$378.40.** PG&E obtains a
21 certain amount of its wholesale electricity from so-called qualifying facilities ("QFs"),
22 companies with which PG&E has legally-mandated and regulated long-term power purchase
23 contracts. Since December 2000, FERC has issued a number of orders relating to QF
24 contracts in light of the California electricity crisis.

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

1 35. Heller Ehrman has provided broad assistance to PG&E on QF matters. For
2 example, Heller Ehrman has represented PG&E in connection with a FERC order granting
3 waivers to QFs, potentially affecting the operation of QFs that had contracted to sell their
4 output to PG&E; filings by certain QFs for authorization to sell power to parties other than
5 PG&E in derogation of existing contracts; motions brought at FERC by QFs seeking relief
6 from California Public Utility Commission decisions concerning the rates to be paid to QFs
7 by utilities such as PG&E; a FERC Notice of Opportunity for Comment on Motions for
8 Emergency Relief and Institution of a Section 210(d) Proceeding; a FERC order granting in
9 part QFs' motions for emergency relief; and interconnection issues raised by FERC; and
10 research and advice regarding the impact of PG&E's bankruptcy case on certain of its QF
11 relationships and clients. Heller Ehrman also has been retained to represent PG&E in
12 litigation and negotiation with QFs in other fora, including the CPUC and this Court.
13 During the Application Period, Heller Ehrman continued to monitor and report to PG&E on
14 FERC issuances related to QFs, and provided advice to PG&E on various proceedings
15 relating to QFs.

16 36. We anticipate providing further assistance to PG&E in the coming months in
17 connection with various proceedings involving QF issues.

18 37. **Matter No. 69: CPUC v. El Paso — FERC Docket RP00-241. Hours**
19 **spent: 235.70; fees sought: \$82,135.10; expenses sought: \$4,344.70.** This matter is used
20 to record time billed in representing PG&E in a complex FERC proceeding commenced by
21 the CPUC against El Paso Natural Gas Company and its affiliate, El Paso Merchant Energy,
22 alleging that their exercise of market power improperly increased natural gas prices at the
23 California border. Natural gas is used to power a significant amount of electricity
24 generation in California, and high natural gas prices were one cause of the increase in
25 wholesale electricity prices starting in the summer of 2000. As a purchaser of wholesale
26 electricity and as a direct purchaser of natural gas, PG&E has been affected by high natural
27 gas prices and therefore participates in this proceeding.

1 38. Heller Ehrman was retained before the petition date to provide a full range of
2 legal services to PG&E in this matter, including acting as trial counsel. Hearings and
3 briefing in this matter were conducted during 2001. Additional hearings were conducted in
4 this proceeding in March and April 2002. Initial and reply briefs were filed in May and
5 June 2002; an initial decision is expected in September 2002. Heller Ehrman anticipates
6 that work on this matter will continue through 2002.

7 39. **Matter No. 71: Order 637 Compliance Filing and Related Complaints —**
8 **FERC Dockets RP99-507, RP00-139, RP00-336. Hours spent: 100.00; fees sought:**
9 **\$30,151.50; expenses sought: \$734.28.** This matter reflects legal advice to and
10 representation of PG&E in connection with proceedings at FERC to address El Paso Natural
11 Gas Company's Order No. 637 compliance filing and related complaints. El Paso's
12 compliance filing bears on El Paso's deliveries of natural gas on its pipeline system and
13 affects PG&E's interests. In May 2002, the FERC required El Paso and its customers to
14 engage in negotiations to rationalize customers' capacity holdings on the El Paso system.

15 40. During the Application Period, Heller Ehrman provided legal advice to
16 PG&E, prepared pleadings, and represented PG&E in technical conference proceedings
17 before the FERC. Heller Ehrman was retained to represent PG&E in these proceedings
18 prior to the petition date, although our involvement became active only with the
19 commencement of technical conference proceedings in July 2001. Heller Ehrman
20 anticipates that its work on this matter will continue through 2002.

21 41. **Matter No. 73: Other FERC Gas Dockets/Matters. Hours spent: 2.0;**
22 **fees sought: \$702.00; expenses sought: \$46.50.** This matter is used to record time billed
23 in providing advice and assistance on natural gas-related proceedings at FERC not
24 accounted for in other matters. Heller Ehrman has been retained since prior to the petition
25 date to act as regulatory counsel for PG&E on a range of issues relating to natural gas
26 proceedings at FERC. Under this matter, Heller Ehrman provides PG&E with general
27 FERC-related advice, including advice as to whether PG&E should intervene, comment on,

1 or otherwise participate in FERC proceedings affecting its interests. During the Application
2 Period, Heller Ehrman performed only occasional services on this matter.

3 42. **Matter No. 74: Seller/Generator Issues. Hours spent: 3.70; fees sought:**
4 **\$1,450.40; expenses sought: \$0.00.** This matter is used to record time billed in providing
5 advice to PG&E concerning the role of third parties in the California electricity market
6 crisis, including potential claims for recovery of money or other relief that might be brought
7 against such third parties. Heller Ehrman has been retained to provide such services since
8 prior to PG&E's bankruptcy filing. This engagement arises in part in connection with the
9 instant bankruptcy case and also includes issues that currently do not pertain to any
10 particular lawsuit or regulatory docket.

11 43. Heller Ehrman's work on such matters has ranged from participation in
12 meetings with consultants and other counsel, to providing ongoing legal advice and
13 counseling on various issues. For example, Heller Ehrman has engaged in extensive
14 discussions with PG&E attorneys and other counsel for PG&E regarding potential claims
15 that might be brought against third parties in connection with the California electric power
16 market crisis. Heller Ehrman also has analyzed and provided advice regarding the
17 relationship of such potential claims to PG&E's Filed Rate Lawsuit (*see* narrative
18 description of Matter No. 64, *supra*) and to PG&E's bankruptcy case. Heller Ehrman has
19 worked extensively with consultants retained by PG&E in connection with such potential
20 claims. Heller Ehrman also has assisted PG&E in its efforts to obtain discovery relating to
21 participation by generators and marketers in California's PX and ISO markets. Heller
22 Ehrman billed only a small amount of time to this matter for such advice during the
23 Application Period.

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

27 45. **Matter No. 75: General Corporate Issues. Hours spent: 2.0; fees sought:**
28 **\$918.00; expenses sought: \$0.00.** This matter records time billed in providing general

1 corporate advice to PG&E. Heller Ehrman has been retained to provide such services since
2 prior to PG&E's bankruptcy filing. This matter does not correspond to any particular
3 lawsuit or regulatory docket. Rather, it encompasses legal advice and counseling on a wide
4 range of corporate issues, typically episodic and discrete.

5 46. Heller Ehrman's work on such matters both prior to and after the filing of
6 PG&E's bankruptcy petition has ranged from oral advice in response to specific questions
7 posed by PG&E, to providing revisions and comments on documents or preparing more
8 formal memoranda. For example, before and during the Application Period, Heller Ehrman
9 has been asked to review various public disclosure filings made with the Securities
10 Exchange Commission and to comment on portions of such filings that describe litigation or
11 regulatory matters in which Heller Ehrman provides legal representation to PG&E; to
12 review and revise PG&E's antitrust compliance policies; and to provide general legal
13 guidance in connection with various securities litigation filings naming PG&E as a
14 defendant, including coordinating with counsel for co-defendants and implementing the
15 bankruptcy stay with respect to such litigation. From time to time, Heller Ehrman also
16 assists PG&E in identifying other types of new litigation filings naming PG&E as a
17 defendant and implementing the bankruptcy stay in those lawsuits. During the Application
18 Period, Heller Ehrman billed only a small amount of time to this matter for such advice.

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

22 48. **Matter No. 76: CPUC Docket 01-03-082. Hours spent: 10.40; fees**
23 **sought: \$4,032.20; expenses sought: \$1.08.** This matter is used to record time billed in
24 analyzing, performing legal research, preparing memoranda, and providing advice to PG&E
25 regarding Decision 01-03-082 issued by the California Public Utilities Commission on
26 March 27, 2001. That decision adopted certain retroactive regulatory accounting changes
27
28

1 proposed by The Utility Reform Network ("TURN"), a consumer advocacy group.⁹ PG&E
2 filed for bankruptcy protection shortly after the decision was issued.

3 49. On April 19, 2001, PG&E (through counsel Howard Rice Nemerovski Canady
4 Falk & Rabkin) filed an application in this Court for a preliminary injunction to stay
5 enforcement of Decision 01-03-082.¹⁰ PG&E and the CPUC extensively briefed issues
6 relating to Decision 01-03-082 to the Court. On June 1, 2001, the Court denied PG&E's
7 preliminary injunction application, and PG&E appealed. The appeal currently is pending
8 before the Hon. Vaughn Walker of the United States District Court for the Northern District
9 of California.

10 50. CPUC Decision 01-03-082 implicates numerous technical issues involving the
11 interplay of regulatory accounts used to track PG&E's costs and revenues in buying

12
13 ⁹ Specifically, the decision involves the interaction between the Transition Revenue
14 Account ("TRA"), which was used to account for PG&E's revenues from the provision of
15 retail electric service and associated costs, including wholesale power procurement costs as
16 well as transmission and distribution costs, and the Transition Cost Balancing Account
17 ("TCBA"), which was used to account for so-called "stranded costs" or "transition costs,"
which are PG&E's historic investments in generation facilities and other past generation-
related costs that might become unrecoverable as a result of the introduction of competition
into the California retail market.

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

24 ¹⁰ PG&E alleged therein that the CPUC's Decision No. 01-03-082 was an attempt to
25 interfere with PG&E's preemption and other claims which are the subject of the Filed Rate
26 Lawsuit, and that the CPUC contended that Decision No. 01-03-082 would have the effect
27 of preventing PG&E from recovering billions of dollars in undercollected wholesale power
28 costs. PG&E further alleged that the CPUC's Decision No. 01-03-082 was automatically
stayed pursuant to 11 U.S.C. § 362(a)(1) and (a)(3), and that implementation of Decision
No. 01-03-082 threatened the assets of the bankruptcy estate and interfered with the
bankruptcy court's jurisdiction and therefore should be enjoined.

1 wholesale electricity for its customers, selling electricity, disposing of assets, and other
2 matters. During a prior Application Period, Heller Ehrman performed extensive legal
3 services in analyzing the implications of Decision 01-03-082. During the instant
4 Application Period, Heller Ehrman performed a relatively small amount of work on this
5 matter, principally advice and comment to PG&E regarding a petition for writ of review of
6 D.01-03-082 filed by PG&E in the Supreme Court of California, which was denied.

7 51. **Matter No. 77: CPUC OII Proceeding. Hours spent: 316.00; fees**
8 **sought: \$91,913.90; expenses sought: \$7,707.41.** This matter is used to record time
9 billed in providing legal representation and advice to PG&E relating to an investigation
10 commenced by the CPUC regarding certain transactions between PG&E and its parent
11 company, PG&E Corporation. On April 3, 2001, the CPUC issued an "Order Instituting
12 Investigation" ("OII") directed to PG&E, PG&E Corporation, and other investor-owned
13 utilities and their holding companies, commencing an investigation to determine whether the
14 utilities and their respective holding companies "have complied with relevant statutes and
15 Commission decisions in the management and oversight of their companies." The OII
16 stems from the fact that the utilities, as part of the deregulation of the electric industry,
17 changed their corporate forms in the latter part of the 1990s to include a CPUC-regulated
18 utility company and an unregulated holding company.

19 52. The OII purports to investigate the payment of dividends by the regulated
20 utilities to their respective corporate parents, the alleged failure of the corporate parents to
21 extend additional capital funding to their regulated utility subsidiaries, the parent
22 corporations' funding of unregulated subsidiaries, and other corporate transactions. The OII
23 claims to be investigating whether these actions have violated CPUC orders and policies, to
24 determine whether additional rules, conditions, or changes are required in the applicable
25 provisions governing these matters.

26 53. During the Application Period, Heller Ehrman provided advice and
27 consultation to PG&E, performed legal research, and assisted in PG&E's response to
28 demands for production of documents and testimony. The principal work during the

1 Application Period involved the preparation of a petition for review in the California Court
2 of Appeal of the CPUC's Interim Decision in the OII. We anticipate further briefing in the
3 Court of Appeal and representing PG&E in possible additional proceedings before the
4 CPUC. We thus anticipate providing ongoing services to PG&E in this matter.

5 **54. Matter No. 78: Other CPUC and California State Law Matters. Hours**
6 **spent: 148.10; fees sought: \$49,874.00; expenses sought: \$2,060.81.** This matter
7 records services in providing legal advice to PG&E in connection with CPUC regulatory
8 proceedings and orders other than those specified above, and California legislation affecting
9 PG&E's interests. Heller Ehrman has been retained to provide such services since prior to
10 PG&E's bankruptcy filing. This matter pertains to a number of specific CPUC dockets, and
11 also includes advice that does not correspond to any particular lawsuit or regulatory docket.

12 **55.** Heller Ehrman's work on such matters has encompassed legal advice and
13 counseling on a wide range of issues, most of which are ongoing; consulting on tactical and
14 strategic approaches in proceedings before the CPUC; and providing revisions and
15 comments on court and CPUC pleadings and other documents. For example, Heller Ehrman
16 was asked to prepare an extensive analysis of ABX-6, a California statute that affects the
17 regulatory and rate treatment of the electric generation assets owned by PG&E. Heller
18 Ehrman also was asked to review and comment on a number of draft regulatory and judicial
19 filings that in part address ABX-6 and its potential impact on PG&E. On other occasions,
20 Heller Ehrman has been asked to provide advice related to CPUC regulatory proceedings
21 involving the so-called California Procurement Adjustment ("CPA"). In general terms, the
22 CPA is a component of PG&E's rates added by the California Legislature in response to the
23 energy crisis to recover the costs of the State's purchases of power on behalf of PG&E's
24 customers. As with ABX-6, Heller Ehrman has been asked to review and comment on a
25 number of draft regulatory and judicial filings that in part address CPA. Heller Ehrman also
26 has been asked to provide advice and to review and comment on draft regulatory filings
27 regarding the CPUC's ratemaking for PG&E's Utility Retained Generation ("URG") assets.
28 From time to time, Heller Ehrman also has assisted PG&E with regard to other state

1 legislative and regulatory issues, including: Other potential state legislation affecting
2 PG&E's interests, CPUC proceedings pertaining to the planned construction of proposed
3 new transmission facilities by PG&E; DWR's procurement of electric power on behalf of
4 PG&E's retail customers; and CPUC proceedings pertaining to the mechanisms by which
5 DWR's costs are quantified and recovered through PG&E's billings to its retail customers.
6 During the Application Period, Heller Ehrman provided advice and consultation to PG&E
7 related to proposed legislation, performed legal research and provided legal advice relevant
8 to various state regulatory proceedings, and assisted in PG&E's response to demands for
9 production of documents and testimony before a legislative committee.

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

14 57. **Matter No. 79: Other Advice, Consultation, Research re Energy Issues.**
15 **Hours spent: 111.60; fees sought: \$39,048.50; expenses sought: \$2,607.19.** This matter
16 is used to record time billed for advice, consultation and research on energy issues not
17 covered by other matters. Prior to the Application Period, for example, Heller Ehrman's
18 work on this matter included consulting with PG&E regarding preparation of responses to
19 requests for information from California legislators.

20 58. During the Application Period, a variety of projects arose relating to the
21 bankruptcy proceeding of the California Power Exchange ("PX") and related FERC
22 proceedings. Until January 2001, PG&E purchased virtually all of its electric power
23 through the PX. Currently, the PX is holding in trust hundreds of millions of dollars in
24 collateral of many power sellers, as well as over \$1 billion in funds that were paid by buyers
25 of power such as PG&E and that are awaiting potential distribution to sellers. The PX has
26 filed claims against PG&E for over \$2 billion in allegedly unpaid bills. Heller Ehrman has
27 represented PG&E in various FERC proceedings relating to the governance of the PX, the
28 continued funding of the PX, and the disposition of funds and collateral held by the PX.

1 Various sellers have sought to eliminate their collateral held by the PX, or have sought
2 disbursement of PX funds, and Heller Ehrman has assisted PG&E in keeping those funds
3 and collateral available at the PX until the FERC refund proceedings are resolved. Heller
4 Ehrman has likewise counseled PG&E on numerous energy-related questions concerning
5 regulatory and other issues relating to the PX bankruptcy proceeding. The goal of those
6 efforts has been to oppose unfounded claims against PG&E, and to protect PG&E's rights to
7 funds to which it is entitled.

8 59. We anticipate periodically being called upon to continue to provide advice and
9 consultation to PG&E on various energy-related issues such as these questions relating to
10 the PX.

11 60. **Matter No. 80: CPUC Prudence Review. Hours spent: 413.20; fees**
12 **sought: \$105,780.40; expenses sought: \$1,009.73.** This matter is used to record time
13 billed in providing legal services to PG&E in connection PG&E's 2001 Annual Transition
14 Cost Proceeding ("ATCP") currently ongoing before the CPUC, as well as other anticipated
15 future CPUC proceedings, which address the reasonableness of PG&E's generation and
16 procurement practices and PG&E's ability to recover billions of dollars in procurement and
17 generation-related costs.

18 61. During the Application Period, Heller Ehrman provided oral and written
19 advice to PG&E regarding the factual and legal issues that have arisen in the CPUC
20 proceedings described above, and assisted with responses to data requests.

21 62. The ATCP proceeding was scheduled for additional presentation of testimony,
22 hearing and briefing in 2002; that schedule has been superseded. Heller Ehrman will
23 continue to assist PG&E in those activities. We thus anticipate providing extensive ongoing
24 services to PG&E in connection with the foregoing proceedings.

25 63. **Matter No. 81: Ancillary Bankruptcy Services Related to Other Matters,**
26 **and Administration. Hours spent: 19.80; fees sought: \$4,200.40; expenses sought:**
27 **\$0.00.** The fees reflected in this matter encompass services relating to PG&E's Chapter 11
28 case, typically involving the interrelationship between the bankruptcy case or bankruptcy

1 law and Heller Ehrman's services or expertise in the primary areas for which it was engaged
2 as Special Counsel. More specifically, services recorded in this matter include:

3 a. Advice and consultation to PG&E or its other counsel pursuant to
4 specific request by PG&E regarding pending or contemplated litigation in the Chapter 11
5 case, particularly litigation involving claims or subject matters related to the other matters
6 for which Heller Ehrman is or may be retained;

7 b. Advice and consultation to PG&E or its other counsel pursuant to
8 specific request by PG&E regarding litigation or bankruptcy strategy affecting other matters
9 for which Heller Ehrman is or may be retained, or as to which Heller Ehrman's litigation,
10 regulatory or transactional expertise enables it to provide added value to the exercise,
11 particularly including advice on such matters bearing on the formulation of PG&E's plan of
12 reorganization or the content of the disclosure statement;

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

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

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

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

26 64. During the Application Period, Heller Ehrman provided legal advice regarding
27 the CPUC's Plan of Reorganization but did not otherwise bill significant time to this matter.
28 We anticipate being called upon to continue to provide ongoing advice and consultation to

1 PG&E on various matters, issues and questions in this area, but are unable to predict the
2 nature or scope of future services.

3 **65. Matter No. 82: Bankruptcy — Employment and Fee Applications.**
4 **Hours spent: 350.80; fees sought: \$79,750.40; expenses sought: \$4,296.21.** During the
5 Application Period, the services and fees in this matter related primarily to Heller Ehrman's
6 preparation of its Third Interim Fee Application and four monthly Cover Sheet
7 Applications. Extensive work was required in connection with the Third Interim Fee
8 Application, in which approximately \$2.5 million in fees and expenses were at issue. The
9 Application involved assembling and filing hundreds of pages of timesheets and other
10 exhibits; preparing detailed narrative descriptions of work performed; preparing for and
11 participating in the hearing; and preparing a Response to an Objection by the United States
12 Trustee. Preparation of Heller Ehrman's monthly Cover Sheet Applications also involved
13 substantial time and effort.

14 **66.** The timekeepers principally dedicated to Matter 82 during the Application
15 period were Adam M. Cole and David R. Luster. Mr. Cole recorded 89.3 hours with a time
16 value of \$30,540.60, and Mr. Luster recorded 90.40 hours with a time value of \$14,155.80.
17 Mr. Cole, a shareholder, was assigned responsibility for managing the fee application
18 process and cover sheet application process, in large part because he has the lowest billing
19 rate of all Heller Ehrman shareholders working on the engagement. Mr. Luster, a senior
20 paralegal, was assigned to this task based on his comprehensive overall knowledge of the
21 PG&E Matters, enabling him to provide the most efficient support and assistance.

22 **67. Matter No. 85: Appeals of FERC Orders — Dockets EL 00-95 et al.**
23 **Hours spent: 183.60; fees sought: \$32,253.40; expenses sought: \$3,188.12.** This matter
24 involves the appeals of FERC orders in Dockets EL00-95 and related dockets. On
25 December 19, 2001, FERC issued an appealable order resolving many of the outstanding
26 issues relating to refunds for overcharges in California power markets and prospective price
27 mitigation in California power markets. Over 50 parties, including PG&E, filed petitions
28 for review of the December 19, 2001, Order and its predecessor orders. A subsequent

1 FERC order was issued on May 15, 2002, and again over 50 parties filed petitions for
2 review. Those petitions were filed in both the D.C. Circuit and Ninth Circuit Courts of
3 Appeals, although it appears that they all have been consolidated in the Ninth Circuit.

4 68. Heller Ehrman has been retained to represent PG&E in these appeals. During
5 the Application Period, Heller Ehrman provided legal advice and filed papers on PG&E's
6 behalf. On August 22, 2002, the Ninth Circuit stayed the pending appeals and remanded the
7 proceeding to FERC to allow the parties to adduce additional evidence on certain issues.
8 We anticipate performing significant additional work for PG&E as these appeals proceed,
9 and as any matters are litigated concerning the Ninth Circuit remand.

10 69. **Matter No. 86: FERC Fact-Finding Investigation. Hours spent:**
11 **1,353.60; fees sought: \$387,284.40; expenses sought: \$19,336.92.¹¹** This matter involves
12 a proceeding initiated by FERC in early 2002 to investigate activities in the electric and gas
13 markets in the western United States from January 2000 through December 2001. A series
14 of disclosures about potential market manipulation by Enron, and concerning other behavior
15 by other electric and gas market participants, prompted FERC to initiate a broad-reaching
16 investigation. PG&E is impacted by the investigation in two significant ways: (i) because
17 PG&E was a market participant in western electric and gas markets during the relevant
18 period, PG&E, like all market participants, has been required to comply with extensive
19 discovery requests propounded by FERC; (ii) because PG&E was a net buyer in electric and
20 gas markets during the relevant period, it may be able to recover significant sums
21 (potentially hundreds of millions or billions of dollars) if FERC finds that buyers in those
22 markets were overcharged as a result of wrongful behavior. Heller Ehrman has represented
23 PG&E in connection with both issues, counseling PG&E in its internal investigations to
24

25 ¹¹ The July bill for Matter 86 as originally submitted to PG&E contained a July 31,
26 2002, entry for H S Kim ("Draft surrebuttal testimony"; 8.00 hrs at \$329/hr = \$2,632.00).
27 See *supra* note 6. Heller Ehrman subsequently prepared and provided to PG&E revised July
28 bills for Matter Nos. 63 and 86 reflecting a transfer of the foregoing entry from Matter No.
86 to Matter No. 63. The figures above reflect the corrected hours and fees for Matter 86.
The accompanying Time Records Exhibit contains the corrected bills.

1 comply with FERC discovery requests, and advising PG&E on relief that may be available
2 as a result of the investigation. We anticipated performing significant additional services for
3 PG&E as this investigation proceeds.

4 70. **Matter No. 87: Abbell Credit Corp., et al. v. Bank of America**
5 **Corporation, et al. Hours spent: 155.10; fees sought: \$56,080.80; expenses sought:**
6 **\$1,799.68.** This now-resolved matter involved claims by purchasers of commercial notes
7 issued by PG&E from Banc of America Securities, L.C.C. ("BAS"), one of the dealers
8 appointed to sell the notes and redeem them at maturity. Plaintiffs alleged that the notes
9 were not prime quality commercial paper as of the date of issuance and thus did not fall
10 within the nonregistration exemption of Section 3(a)(3) of the Securities Act of 1933.
11 Plaintiffs' complaint alleged three counts against BAS, the third being an alleged violation
12 of Section 12(1) of the 1933 Act.

13 71. Although PG&E was not named as a defendant in the Abbell Credit litigation,
14 BAS threatened to proceed against PG&E, especially if BAS was not able to establish on
15 summary judgment that the commercial paper was prime quality when issued. BAS's
16 threatened litigation against PG&E focused on the fact that PG&E represented and
17 warranted to BAS that its commercial paper "shall not require the registration of the Notes
18 under the Securities Act of 1933, as amended." BAS also contended that its dealer
19 agreement with PG&E obligated PG&E to indemnify BAS.

20 72. In light of BAS's position, PG&E sought legal representation from Heller
21 Ehrman to evaluate, among other things: (i) BAS's chances of recovery from PG&E in the
22 threatened litigation; (ii) the effect of the automatic stay in bankruptcy on any claim BAS
23 may have against PG&E; (iii) the risk that the pending litigation would have a preclusive
24 effect on any claim brought by BAS against PG&E; and (iv) the possibility that PG&E
25 could assist BAS resolve the litigation, while at the same time protecting its own interests.
26 Ultimately, PG&E provided BAS with a declaration intended to help resolve the Abbell
27 Credit litigation — namely, a declaration on behalf of PG&E establishing that the notes at
28 issue properly fell within the nonregistration exemption of Section 3(a)(3). After receiving

1 the declaration, BAS resolved the matter with plaintiffs through a mediator. It now appears
2 that BAS will not be pursuing any claim for indemnity against PG&E relating to the
3 settlement. Accordingly, it is unlikely that Heller Ehrman will be called on to perform any
4 significant additional services on this matter.

5 VII. REQUIRED DISCLOSURES AND CERTIFICATION

6 73. Heller Ehrman has not charged for expenses for: (a) office overhead; (b)
7 secretarial overtime; (c) charges for after-hours and weekend air conditioning and other
8 utilities; (d) cost of meals or transportation provided to attorneys and staff who work late;
9 (e) word processing and similar clerical functions; and (f) amenities such as newspapers,
10 shoe shines, dry cleaning, etc., and the cost of lunches while Heller Ehrman personnel are
11 away from the office.

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

16 75. Computerized legal research is billed at the standard Westlaw and LEXIS
17 rates without markup or discount. Heller Ehrman receives a volume discount from Westlaw
18 and LEXIS which is not allocable to any particular matter, and which Heller Ehrman does
19 not attribute to any particular client, including PG&E.

20 76. Heller Ehrman believes that the regular hourly rates of the attorneys and
21 paralegals employed by Heller Ehrman for similar services of lawyers and paralegals of
22 reasonably comparable skill and reputation are consistent with those prevailing in the
23 various legal communities in which Heller Ehrman's attorneys and paralegals practice.
24 Heller Ehrman's compensation and expense reimbursement requested in this Application
25 have been billed at rates, in accordance with practices, more favorable than those
26 customarily employed by Heller Ehrman and generally accepted by Heller Ehrman's clients.
27 Pursuant to a Master Fee Agreement with PG&E, Heller Ehrman has agreed to apply a 10%
28 discount from regular hourly rates to the fees of all timekeepers working on the matters for

1 which compensation is sought herein, and to provide a significant additional billing
2 accommodation as described in the following paragraph.

3 77. Specifically, pursuant to the Master Fee Agreement between PG&E and
4 Heller Ehrman, Heller Ehrman has agreed to freeze for the first two years in the lifetime of a
5 matter the billing rates of shareholders working on that matter at 90% of the shareholder's
6 rate in place when the matter commenced. The rates of associates and paralegals are not
7 frozen at any time, but are charged at 90% of the rate in place when the work is performed.

8 78. Heller Ehrman has neither received nor been promised any compensation from
9 any source in connection with this case or its services to be performed herein, except
10 compensation and reimbursement of expenses to be allowed by this Court and paid from the
11 estate, pursuant to the applicable provisions of the Bankruptcy Code and Rules. To date,
12 Heller Ehrman has received no payments from any source for its fees and expenses in this
13 case, other than (a) those described in paragraph 5 above (\$9,014,835.58); (b) those
14 described in paragraph 6 above (\$153,615.61, applied to retainer); and (c) a refund of
15 \$7,395.00 and cancellation of a \$9,825.26 charge in connection with its contingent fee
16 engagement relating to insurance coverage matters (which are not the subject of this
17 Application).

18 79. Heller Ehrman has no agreement or understanding for sharing any fees or
19 expenses which Heller Ehrman may receive in this case with any person other than members
20 and associates of Heller Ehrman.

21 VIII. REQUEST FOR COMPENSATION

22 80. Based on the foregoing, Heller Ehrman requests the Court to approve this
23 Application; to allow it fees and expenses on an interim basis in the respective amounts of
24 \$2,939,674.20 and \$187,753.64; and to authorize PG&E to pay the allowed amounts
25 forthwith.

26 81. (a) Attached behind Tab 1 to the accompanying Time Records Exhibit and as
27 Exhibit A to the Certification of Adam M. Cole ("Cole Certification") is the name of each
28 professional who performed services in connection with the various matters described

1 herein during the period covered by this Application and the hourly rates for each such
2 professional on such matters; (b) attached behind Tab 2 to the Time Records Exhibit is a
3 summary of the fees and expenses, and additional information, for each matter; (c) attached
4 behind Tabs 3-24 to the Time Records Exhibit are the detailed time and expense statements
5 for the Application Period that comply with all Northern District of California Bankruptcy
6 Local Rules and Compensation Guidelines, the Guidelines of the Office of the United States
7 Trustee, and the Court's December 12, 2001, Memorandum Decision Regarding
8 Applications for Interim Compensation of Professionals; and (d) attached as Exhibit B to the
9 Cole Certification is a list of the qualifications and experience of all timekeepers for whom
10 compensation is sought.

11 82. The Firm has served a copy of this Application (without Exhibits) on the
12 Special Notice List in this case.

13 83. The interim compensation and reimbursement of expenses sought in this
14 Application is on account and is not final. Upon the conclusion of this case, the Firm will
15 seek fees and reimbursement of the expenses incurred for the totality of the services
16 rendered in the case. Any interim fees or reimbursement of expenses approved by this
17 Court and received by the Firm will be credited against such final fees and expenses as may
18 be allowed by this Court.

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2 84. The Firm represents and warrants that its billing practices comply with all
3 Northern District of California Bankruptcy Local Rules and Compensation Guidelines and
4 the Guidelines of the Office of the United States Trustee, except as otherwise stated in the
5 Cole Certification.

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7 Dated: September 13, 2002

Respectfully submitted,

8 HELLER EHRMAN WHITE & McAULIFFE LLP

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10 By: 

11 ADAM M. COLE
12 Special Counsel for Debtor in Possession
13 PACIFIC GAS AND ELECTRIC COMPANY
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