

MARIE L. FIALA (No. 79676)
PETER J. BENVENUTTI (No. 60566)
ADAM M. COLE (No. 145344)
HELLER EHRMAN WHITE & McAULIFFE LLP
333 Bush Street
San Francisco, California 94104-2878
Telephone: (415) 772-6000
Facsimile: (415) 772-6268

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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: March 7, 2003
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 FIFTH INTERIM FEE
APPLICATION FOR ALLOWANCE AND PAYMENT OF COMPENSATION
AND REIMBURSEMENT OF EXPENSES FOR THE PERIOD
AUGUST 1, 2002, THROUGH NOVEMBER 30, 2002**

Pursuant to the Order Establishing Interim Fee Application and Expense
Reimbursement Procedure, entered July 26, 2001, and amended November 8, 2001, and
March 18, 2002 ("Order re Fee Applications"), Heller Ehrman White & McAuliffe LLP
("Heller Ehrman," or the "Firm") files this Fifth Interim Fee Application (the "Application")
for Allowance and Payment of Compensation and Reimbursement of Expenses for the
Period August 1, 2002, Through November 30, 2002 (the "Application Period").

Heller
Ehrman
White &
McAuliffe LLP

HELLER EHRMAN WHITE & McAULIFFE LLP'S FIFTH 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 \$3,442,121.72 in fees and expenses during the
10 Application Period. The total fees represent 11,477.60 hours expended during the
11 Application Period. Those fees and expenses break down as follows:

12

Period	Fees	Expenses	Total
8/01/02 to 11/30/02	\$3,246,985.89	\$195,135.83	\$3,442,121.72

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 \$3,442,121.72.

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:

23
24
25
26 ¹ As indicated in paragraph 5 below, of the \$3,442,121.72 owed to Heller Ehrman for
27 fees and expenses incurred during the Application Period, PG&E already has paid Heller
28 Ehrman \$2,316,800.21 (85% of fees and 100% of expenses for August 2002, September
2002 and October 2002; no payment has yet been received for November 2002). The
amount still owing to Heller Ehrman is \$1,125,321.51.

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
4/1/02-7/31/02 (fourth post-petition interim fee application period)	\$3,127,427.84	100% of fees and 100% of expenses	\$3,127,427.84
8/1/02-8/31/02 (August CSA period)	\$ 868,966.42	85% of fees and 100% of expenses	\$ 868,966.43
9/1/02-9/30/02 (September CSA period)	\$ 720,787.52	85% of fees and 100% of expenses	\$ 720,787.53
10/1/02-10/31/02 (October CSA period)	\$ 727,046.52	85% of fees and 100% of expenses	\$ 727,046.25

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).

11/1/02-11/30/02 (November CSA period)	\$ 638,23493	85% of fees and 100% of expenses	\$ 0
Total	\$13,076,369.07		\$12,399,796.62

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

7. PG&E and Heller Ehrman are parties to a contingent fee agreement (entered into on January 1, 1993) (the "Contingent Fee Agreement") pertaining to Heller Ehrman's representation of PG&E in pursuing insurance recoveries from a number of insurance companies for losses incurred by PG&E as a result of environmental liabilities. The terms of the Contingent Fee Agreement are described in the Supplemental Application of Debtor in Possession for Authority to Employ Heller Ehrman White & McAuliffe LLP as Special Counsel (Insurance Coverage — Contingent Fee), filed May 18, 2001, and approved by this Court in its June 4, 2001 Order. Heller Ehrman does not seek in this Application

1 compensation or expenses in connection with the contingent fee matter, but instead expects
2 to seek compensation and expenses with respect to that matter by a separate fee application
3 to be filed at an appropriate time.

4 IV. CASE STATUS

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

8 V. SUMMARY OF SERVICES PERFORMED

9 9. Heller Ehrman's services to PG&E during the Application Period are
10 described in detail⁴ in the billing statements attached to the accompanying Time Records
11 Exhibit of Special Counsel Heller Ehrman White & McAuliffe LLP for the Period April 1,
12 2002, Through July 31, 2002 ("Time Records Exhibit").

13 10. During the Application Period, Heller Ehrman has provided legal services to
14 PG&E on a number of matters. The bulk of those services has continued to involve efforts
15 to obtain rate relief for PG&E from governmental agencies or the courts in the wake of the
16 California energy crisis that caused PG&E's financial condition to deteriorate and
17 precipitated this bankruptcy filing. Heller Ehrman's services have included advice,
18 counseling, and representation regarding regulatory, rate setting and rate refund matters, and
19 litigation related to those and related subject areas. Heller Ehrman has represented PG&E in
20 connection with proceedings before the Federal Energy Regulatory Commission ("FERC")
21 addressing the California energy market and directly affecting PG&E. Heller Ehrman has

22 ⁴ In accordance with Heller Ehrman's professional obligations to its client, Heller
23 Ehrman's time records have been edited to prevent disclosure of confidential information,
24 including information protected by the attorney-client privilege and the work product
25 doctrine. Such information includes, but is not limited to, the specific subject matter of
26 confidential attorney-client or attorney work product discussions; the identity and work
27 product of nontestifying expert consultants; and the exact nature of the issues and theories
28 in written or oral form. Heller Ehrman submits these time records pursuant to order of the

(Footnote continued)

1 provided counseling, representation and assistance to PG&E in connection with proceedings
2 at the California Public Utilities Commission ("CPUC") involving PG&E. Heller Ehrman
3 also has represented PG&E in connection with a lawsuit against the Commissioners of the
4 CPUC, which seeks to require the CPUC to comply with federal law and allow PG&E to
5 recover in its retail rates the wholesale electricity costs it incurred in meeting its state-
6 imposed obligation to serve its customers. If PG&E succeeds on its claims as pleaded, that
7 lawsuit ultimately could bring billions of dollars into PG&E's bankruptcy estate through
8 increased retail rate revenues. Heller Ehrman also has provided bankruptcy-related advice
9 and services to PG&E as an adjunct to its other services.⁵

10 11. Consistent with the Court's Guidelines for Compensation of Professionals (the
11 "Fee Guidelines"), Heller Ehrman's services during the Application Period have been
12 recorded under 20 separate internal matter numbers. Billing statements for each of those
13 matters are attached to the accompanying Time Records Exhibit. For each matter, the
14 billing statements set forth, *inter alia*, the total number of hours recorded by each attorney
15 and paralegal, the timekeeper's hourly billing rate(s), and the fees requested. A narrative
16 description of each of those matters follows.

17 VI. NARRATIVE DESCRIPTION OF SERVICES

18 12. **Matter No. 44: Nuclear Electric. Hours spent: 1.40; fees sought:**
19 **\$579.60; expenses sought: \$0.** This matter was used to record time billed in connection
20 with preparation of an opinion letter to support the application for renewal of an insurance
21 policy for PG&E's Diablo Canyon nuclear facility.

22 13. **Matter No. 45: Utility General Insurance Advice. Hours spent: 49.50;**
23 **fees sought: \$17,946.80; expenses sought: \$297.41.** This matter is used to record time
24 billed in connection with insurance advice and services provided by Heller Ehrman to
25 Bankruptcy Court and without any waiver of any privilege, confidentiality protection or
26 privacy right that might apply to the information contained therein.

1 PG&E. This matter is separate from and independent of the *PG&E v. Lexington Insurance*
2 *Company et al.* insurance coverage action (Matter No. 11), which is subject to a separate
3 contingent fee agreement. *See supra* ¶ 7.

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

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

12 16. **Matter No. 54: Modesto Irrigation District v. Destec. Hours spent: .60;**
13 **fees sought: \$73.20; expenses sought: \$0.** This matter is used to record time billed in
14 providing legal advice to PG&E in connection with a lawsuit filed against PG&E by the
15 Modesto Irrigation District ("MID"), alleging that PG&E violated the antitrust laws by
16 refusing to accede to MID's request for interconnection service between PG&E's
17 transmission system and MID's facilities. The case was filed on August 3, 1998, and was
18 dismissed with prejudice on August 20, 1999. Plaintiff appealed the dismissal to the Ninth
19 Circuit Court of Appeals. Appellate briefing was concluded on March 31, 2000, and oral
20 argument was heard on the appeal on March 15, 2001. Thus, at the time that PG&E filed
21 the instant bankruptcy petition, the appeal had been fully briefed and argued and awaited
22 resolution by the Ninth Circuit. As a result of the bankruptcy filing by PG&E, the MID
23 action was initially stayed pursuant to the automatic stay provisions of Section 362(a) of the
24 Bankruptcy Code. The parties thereafter stipulated that plaintiff would seek relief from the
25 automatic stay for the limited purpose of resolving the appeal under submission in the Ninth

26
27 ⁵ See June 4, 2001, Order at p. 2 (authorizing Heller Ehrman to provide "bankruptcy-
28 related legal services as an adjunct to the other legal services to be performed by Heller
Ehrman").

1 Circuit, including any rehearing requests or certiorari petitions. This Court granted
2 plaintiff's motion for relief from the stay on those terms and the Ninth Circuit ordered that
3 the case be resubmitted on August 3, 2001. On December 6, 2002, the Ninth Circuit ruled
4 in plaintiffs' favor, reversing the order of the district court and remanding the matter for
5 further proceedings.

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

10 18. **Matter No. 63: California Market Failures — FERC Docket EL00-95**
11 **and Related Dockets/Matters. Hours spent: 2,990.60; fees sought: \$798,139.00;**
12 **expenses sought: \$84,151.92.** This matter is used to record time billed in connection with
13 the principal FERC proceeding addressing failures in the California electric market. That
14 proceeding, FERC Docket EL00-95, was brought on August 2, 2000, by San Diego Gas and
15 Electric Company ("SDG&E") against all sellers in the California wholesale electric
16 markets, seeking FERC intervention in the markets. PG&E intervened in the proceeding,
17 seeking reform of those markets, and monetary relief and refunds based on overcharges by
18 sellers. Depending on the outcome of this litigation, it is expected that PG&E may receive
19 refunds of a billion dollars or more for overcharges in California electric markets.

20 Heller Ehrman has been retained since prior to the petition date to provide extensive
21 legal services to PG&E in connection with this proceeding. Heller Ehrman has provided
22 legal advice, research and strategy input; prepared and filed numerous briefs and other
23 papers; and appeared at hearings on behalf of PG&E. Heller Ehrman prepared extensive
24 papers and advocated on PG&E's behalf concerning prospective price mitigation relief
25 affecting PG&E which has been the subject of FERC orders issued November 1, 2000,
26 December 15, 2000, April 26, 2001, June 19, 2001, December 19, 2001, and May 15, 2002.
27 Heller Ehrman has likewise represented PG&E in seeking refunds for overcharges by
28 sellers, submitting numerous pleadings which led to refund orders issued by the FERC on

1 July 25, 2001, December 19, 2001, and May 15, 2002. Refund issues have been set for
2 hearing at FERC, and Heller Ehrman is trial counsel for PG&E. The trials relating to refund
3 issues have been held in phases, and Heller Ehrman represented PG&E at a FERC trial on
4 the first phase of refund issues in March 2002.

5 19. During the Application Period, Heller Ehrman conducted substantial
6 discovery and prepared for a trial on the second phase of refund issues. The trial was held
7 in August and September 2002. After the trial, Heller Ehrman prepared extensive post-trial
8 briefs.

9 20. In August 2002, FERC requested additional comments on whether the
10 California index price for natural gas was appropriate for use in the refund calculation.
11 FERC earlier had ordered use of this price index in the refund calculation, but evidence
12 increasingly suggested that the index prices had been manipulated or were otherwise
13 unreliable. Heller Ehrman prepared extensive comments and worked with expert witnesses
14 to prepare supporting evidence on this issue, worth several hundred million dollars to
15 PG&E.

16 21. Also in August 2002, the United States Court of Appeals for the Ninth Circuit
17 issued an order remanding to FERC certain issues concerning the refund case. In particular,
18 FERC had limited refunds based on a preliminary finding that there was no evidence of
19 market manipulation by sellers. The Ninth Circuit ruled that FERC was required to allow
20 parties to adduce evidence concerning market manipulation by sellers, although it left to
21 FERC, in the first instance, the issue of how best to allow such evidence to be adduced.
22 Heller Ehrman represented PG&E in its efforts at FERC to recommend a process for
23 allowing discovery into market manipulation by sellers. Various electric sellers argued that
24 aggrieved parties such as PG&E should have limited or no discovery rights. On
25 November 20, 2002, FERC initiated a 100-day period of extensive discovery on the issue of
26 market manipulation by sellers. Heller Ehrman is representing PG&E in this effort, in
27 which hundreds of millions of dollars of additional refund recoveries for PG&E are at stake.

1 22. We anticipate providing extensive continuing legal services to PG&E in this
2 matter. With respect to the issues set for trial, the presiding administrative law judge issued
3 a decision on December 12, 2002. The judge made a preliminary estimate of about \$840
4 million in refunds to PG&E. Heller Ehrman is preparing post-trial briefing on the judge's
5 decision. Heller Ehrman also will continue to represent PG&E on gas price issues,
6 discovery into market manipulation by sellers, and other matters relating to the litigation of
7 the refunds to be paid to PG&E.

8 23. **Matter No. 64: Federal Filed Rate Case. Hours spent: 6,530.10; fees**
9 **sought: \$1,914,579.40; expenses sought: \$70,531.55.** This matter is used to record time
10 billed in providing legal advice and representation to PG&E in a lawsuit filed by PG&E
11 against the Commissioners of the CPUC. The lawsuit seeks to require the CPUC to comply
12 with federal law and allow PG&E to recover in its retail rates the wholesale electricity costs
13 it incurred in meeting its state-imposed obligation to serve its customers. The lawsuit stems
14 from the electricity market crisis that started in the summer of 2000, when the wholesale
15 cost of the electricity that PG&E purchased for delivery to its retail customers experienced
16 unanticipated and massive increases. Although PG&E's wholesale costs rose dramatically,
17 PG&E's retail rate revenues were frozen pursuant to AB 1890, California's electricity
18 market restructuring statute. Between June 2000 and March 31, 2001, PG&E's wholesale
19 costs exceeded the amounts available in PG&E's frozen retail rates to pay for such costs by
20 approximately \$9.2 billion. As a result of the CPUC's refusal to allow PG&E to recover its
21 wholesale costs in retail rates, PG&E amassed crippling debt, ultimately leading PG&E to
22 file the instant bankruptcy petition on April 6, 2001.

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

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

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

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

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

23 28. On August 23, 2002, defendants filed a notice of appeal of the July 25 Order
24 based on the Eleventh Amendment and the Johnson Act, 28 U.S.C. § 1342. On
25

26 ⁶ 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 September 4, 2002, defendants filed a motion to stay proceedings before Judge Walker
2 pending their appeal, and PG&E filed a motion for certification that defendants' appeal is
3 frivolous and that no stay should be imposed, which was granted on October 18, 2002.

4 29. On October 23, 2002, defendants filed a motion in the Ninth Circuit to stay
5 proceedings in the District Court pending appeal. On November 21, 2002, the Ninth Circuit
6 granted that motion.

7 30. During the Application Period, Heller Ehrman provided a wide range of legal
8 services to PG&E in its role as outside counsel representing PG&E in litigating its claims
9 against the CPUC Commissioners in the Filed Rate Lawsuit. Heller Ehrman conducted
10 legal research and analysis regarding PG&E's claims; engaged in extensive discovery
11 activities, including document collection, review, and production, deposition preparation,
12 affirmative discovery preparation, and discovery planning and analysis; undertook trial
13 preparation and fact development; prepared case management conference materials and
14 participated in a case management conference; negotiated and provided other services
15 regarding a subpoena for production of documents to Barrington-Wellesley Group, Inc., an
16 independent auditor retained by the CPUC to verify PG&E's claims of financial distress;
17 worked with consultants and experts; coordinated with other outside counsel retained by PG&E
18 regarding issues in the bankruptcy proceeding implicating Filed Rate Case issues; prepared
19 a motion for certification that defendants' appeal of the July 25 Order on Eleventh
20 Amendment and Johnson Act grounds is frivolous; prepared briefing in the Ninth Circuit
21 opposing defendants' motion to stay; communicated extensively with PG&E regarding
22 strategy issues; and monitored developments in other cases and in the energy industry
23 bearing on PG&E's claims.

24 31. Heller Ehrman anticipates performing additional work for PG&E on the Filed
25 Rate Lawsuit in the coming months at PG&E's request. For example, Heller Ehrman will
26 prepare briefing and appear for PG&E in oral argument in the Ninth Circuit in connection
27 with defendants' appeal of the July 25 Order. In addition, we have been asked to complete
28 various tasks that were ongoing at the time the Ninth Circuit issued its stay, including

1 completing review and assembly of documents for production, preparation of a privilege
2 log, certain fact development issues and preparation of certain lay and expert witness
3 materials. PG&E has requested Heller Ehrman to complete those tasks as expeditiously as
4 possible to avoid the substantial inefficiencies and incremental costs that would be entailed
5 if those tasks were discontinued, only to be restarted after the stay terminates. For example,
6 a team of contract attorneys has been trained and currently is completing review of
7 documents for production. Discontinuing and restarting the document review process
8 months from now would require hiring and providing extensive training to an entirely new
9 team of contract attorneys unfamiliar with the Filed Rate Case, all at substantial cost that
10 can be avoided by completing the project now. Similarly, it is significantly more efficient
11 and cost-effective for PG&E to complete certain lay and expert witness preparation tasks
12 now underway, rather than discontinuing that work and restarting it months later, after
13 recollections have faded and personnel may no longer be available.

14 **32. Matter No. 66: Claims re Missing London Markets. Hours spent: 2.80;**
15 **fees sought: \$1,108.80; expenses sought: \$31.94.** This matter is an offshoot of the *PG&E*
16 *v. Lexington Insurance Company* insurance coverage case, Matter No. 11. Matter No. 11,
17 itself, is subject to a separate contingent fee agreement. *See supra* ¶ 7. Matter No. 66 is
18 used to record time billed in assisting PG&E in an ongoing effort to obtain recovery from its
19 London broker for certain missing London market insurance policies that PG&E was unable
20 to prove in the litigation. English law requires London market brokers to retain evidence of
21 the material terms of the policies they secure for a policyholder, including the original of a
22 document that is referred to as the "placing slip." In this instance, the broker failed to
23 provide this and other records with the result that PG&E was not able to collect from the
24 unknown providers of this missing coverage. Heller Ehrman coordinates with English
25 counsel retained by PG&E to pursue this claim. During the Application Period, Heller
26 Ehrman coordinated with English counsel regarding status and procedural issues.

27 **33. Matter No. 67: Creditworthiness Docket — FERC Docket ER01-889.**
28 **Hours spent: 5.70; fees sought: \$2,256.70; expenses sought: \$8.40.** This docket

1 addresses, among other things, the issue of whether PG&E may be held liable for electricity
2 procured for PG&E's customers after PG&E no longer had the financial resources to assure
3 that it could pay for such power. In January 2001, PG&E became uncreditworthy under
4 existing tariffs, necessitating that an alternative buyer be found to procure power for
5 PG&E's customers. At about the same time, the California Department of Water Resources
6 ("DWR") was empowered to purchase power on behalf of California's cash-deprived
7 utilities. This proceeding specifically involves a January 4, 2001, filing by the ISO to
8 amend its FERC tariff to relax the creditworthiness provisions so that certain entities,
9 including PG&E, could continue buying electric power from third parties despite the fact
10 that those entities do not meet the tariff's creditworthiness requirements. FERC refused to
11 amend the tariff, leaving in place a requirement that power purchases must be made by a
12 creditworthy entity. In a series of subsequent orders, culminating in an order on
13 November 7, 2001, FERC ordered that DWR, not PG&E, should be billed for any third-
14 party power transactions on or after January 17, 2001. The November 7, 2001 Order was
15 affirmed on rehearing on March 27, 2002.

16 34. Heller Ehrman has been retained since prior to the petition date to represent
17 PG&E in connection with the FERC creditworthiness proceedings. During the Application
18 Period, Heller Ehrman has provided continuing legal representation at FERC on
19 creditworthiness issues, and has provided advice to PG&E concerning the interpretation of
20 the orders in the FERC creditworthiness docket and the impact of the FERC orders on
21 orders issued by the California Public Utilities Commission ("CPUC"). In addition, the
22 CPUC has directed PG&E to resume power purchasing in 2003. Heller Ehrman has
23 provided advice to PG&E regarding resumption of purchasing in light of the FERC
24 creditworthiness orders.

25 35. On November 25, 2002, FERC set for hearing the issue of whether DWR had
26 been billed the proper amount for power transactions on or after January 17, 2001. If the
27 billing is revised, the impact on PG&E could be in the tens or hundreds of millions of
28

1 dollars. Heller Ehrman is representing PG&E in the matters set for hearing. We anticipate
2 performing additional work for PG&E on these creditworthiness issues.

3 **36. Matter No. 68: Qualifying Facility ("QF") Proceedings/Issues. Hours**
4 **spent: 16.30; fees sought: \$4,941.90; expenses sought: \$640.03.** PG&E obtains a
5 certain amount of its wholesale electricity from so-called qualifying facilities ("QFs"),
6 companies with which PG&E has legally-mandated and regulated long-term power purchase
7 contracts. Since December 2000, FERC has issued a number of orders relating to QF
8 contracts in light of the California electricity crisis.

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

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

1 39. We anticipate providing further assistance to PG&E in the coming months in
2 connection with various proceedings involving QF issues.

3 40. **Matter No. 69: CPUC v. El Paso — FERC Docket RP00-241. Hours**
4 **spent: 85.50; fees sought: \$28,089.10; expenses sought: \$1,521.35.** This matter is used
5 to record time billed in representing PG&E in a complex FERC proceeding commenced by
6 the CPUC against El Paso Natural Gas Company and its affiliate, El Paso Merchant Energy,
7 alleging that their exercise of market power improperly increased natural gas prices at the
8 California border. Natural gas is used to power a significant amount of electricity
9 generation in California, and high natural gas prices were one cause of the increase in
10 wholesale electricity prices starting in the summer of 2000. As a purchaser of wholesale
11 electricity and as a direct purchaser of natural gas, PG&E has been affected by high natural
12 gas prices and therefore participates in this proceeding.

13 41. Heller Ehrman was retained before the petition date to provide a full range of
14 legal services to PG&E in this matter, including acting as trial counsel. Hearings and
15 briefing in this matter were conducted in three phases during 2001 and 2002. Initial
16 decisions were issued by the presiding judge in October 2001 and September 2002. An oral
17 argument at FERC was held in December 2002. FERC has indicated an intent to act by
18 March 2003, at which time it could potentially institute a remedies phase. Any FERC
19 decision would be subject to requests for rehearing and possible judicial review. Heller
20 Ehrman anticipates that work on this matter will continue through 2003.

21 42. **Matter No. 71: Order 637 Compliance Filing and Related Complaints —**
22 **FERC Dockets RP99-507, RP00-139, RP00-336. Hours spent: 1.30; fees sought:**
23 **\$456.30; expenses sought: \$275.94.** This matter reflects legal advice to and representation
24 of PG&E in connection with proceedings at FERC to address El Paso Natural Gas
25 Company's Order No. 637 compliance filing and related complaints. El Paso's compliance
26 filing bears on El Paso's deliveries of natural gas on its pipeline system and affects PG&E's
27 interests. In May 2002, the FERC required El Paso and its customers to engage in
28 negotiations to rationalize customers' capacity holdings on the El Paso system.

1 43. Heller Ehrman was retained to represent PG&E in these proceedings prior to
2 the petition date. Heller Ehrman activity on this matter was minimal during the Application
3 Period. However, this matter is potentially affected by the outcome of the *CPUC v. El Paso*
4 case (Matter No. 69) and could become more active in the future. Heller Ehrman anticipates
5 that its work on this matter will continue through 2003.

6 44. **Matter No. 77: CPUC OII Proceeding. Hours spent: 270.10; fees**
7 **sought: \$61,373.20; expenses sought: \$9,089.16.** This matter is used to record time
8 billed in providing legal representation and advice to PG&E relating to an investigation
9 commenced by the CPUC regarding certain transactions between PG&E and its parent
10 company, PG&E Corporation. On April 3, 2001, the CPUC issued an "Order Instituting
11 Investigation" ("OII") directed to PG&E, PG&E Corporation, and other investor-owned
12 utilities and their holding companies, commencing an investigation to determine whether the
13 utilities and their respective holding companies "have complied with relevant statutes and
14 Commission decisions in the management and oversight of their companies." The OII
15 stems from the fact that the utilities, as part of the deregulation of the electric industry,
16 changed their corporate forms in the latter part of the 1990s to include a CPUC-regulated
17 utility company and an unregulated holding company.

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

25 46. During the Application Period, Heller Ehrman provided advice and
26 consultation to PG&E, performed legal research, and assisted in PG&E's response to
27 demands for production of documents and testimony. The principal work during the
28 Application Period involved the preparation of a petition for review in the California Court

1 of Appeal of the CPUC's Interim Decision in the OII. We anticipate further briefing in the
2 Court of Appeal and representing PG&E in possible additional proceedings before the
3 CPUC. We thus anticipate providing ongoing services to PG&E in this matter.

4 **47. Matter No. 78: Other CPUC and California State Law Matters. Hours**
5 **spent: 26.60; fees sought: \$12,188.80; expenses sought: \$753.92.** This matter records
6 services in providing legal advice to PG&E in connection with certain California state court
7 litigation, CPUC regulatory proceedings and orders other than those specified above, and
8 California legislation affecting PG&E's interests. Heller Ehrman has been retained to
9 provide such services since prior to PG&E's bankruptcy filing. This matter pertains to a
10 number of specific CPUC dockets, and also includes advice that does not correspond to any
11 particular lawsuit or regulatory docket.

12 **48.** 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 49. 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 state court, regulatory or legislative
12 actions, although we cannot predict in advance the nature or extent of such future matters or
13 services.

14 50. **Matter No. 79: Other Advice, Consultation, Research re Energy Issues.**
15 **Hours spent: 181.50; fees sought: \$68,986.50; expenses sought: \$589.84.** 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 51. During the Application Period, Heller Ehrman provided legal services to
21 PG&E on a number of projects. For example, a variety of projects arose relating to PG&E's
22 claims for relief arising from the 2000-2001 electric crisis. Heller Ehrman drafted and
23 provided advice to PG&E on claims filed by PG&E in the Enron bankruptcy proceedings,
24 which claims relate to or arose from power market problems that are the subject of the
25 FERC proceedings in which Heller Ehrman represents PG&E. Conduct by Enron
26 (including conduct that has led to a criminal conviction) was at least in part responsible for
27 the high prices experienced in the California energy markets, and PG&E's claims protect its
28 right to obtain relief for Enron's actions. During the Application Period, Heller Ehrman also

1 provided advice on issues relating to the CPUC decisions directing PG&E to resume power
2 purchasing in January 2003. Those CPUC decisions raised issues that implicated federal
3 law, and Heller Ehrman provided advice on the interaction of the CPUC proposals and
4 federal requirements.

5 52. We anticipate periodically being called upon to continue to provide advice and
6 consultation to PG&E on various energy-related issues such as these questions relating to
7 the PX.

8 53. **Matter No. 80: CPUC Prudence Review. Hours spent: 379.20; fees**
9 **sought: \$99,625.20; expenses sought: \$1,205.70.** This matter is used to record time
10 billed in providing legal services to PG&E in connection PG&E's 2001 Annual Transition
11 Cost Proceeding ("ATCP") currently ongoing before the CPUC, as well as other anticipated
12 future CPUC proceedings, which address the reasonableness of PG&E's generation and
13 procurement practices and PG&E's ability to recover billions of dollars in procurement and
14 generation-related costs.

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

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

22 56. **Matter No. 81: Ancillary Bankruptcy Services Related to Other Matters,**
23 **and Administration. Hours spent: 14.60; fees sought: \$2,977.20; expenses sought:**
24 **\$7.81.** The fees reflected in this matter encompass services relating to PG&E's Chapter 11
25 case, typically involving the interrelationship between the bankruptcy case or bankruptcy
26 law and Heller Ehrman's services or expertise in the primary areas for which it was engaged
27 as Special Counsel. More specifically, services recorded in this matter include:

28 a. Advice and consultation to PG&E or its other counsel pursuant to

1 specific request by PG&E regarding pending or contemplated litigation in the Chapter 11
2 case, particularly litigation involving claims or subject matters related to the other matters
3 for which Heller Ehrman is or may be retained;

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

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

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

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

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

23 57. During the Application Period, Heller Ehrman did not bill significant time to
24 this matter. We anticipate being called upon to continue to provide ongoing advice and
25 consultation to PG&E on various matters, issues and questions in this area, but are unable to
26 predict the nature or scope of future services.

27 58. **Matter No. 82: Bankruptcy — Employment and Fee Applications.**
28 **Hours spent: 265.80; fees sought: \$62,352.20; expenses sought: \$9,069.82.** During the

1 Application Period, the services and fees in this matter related primarily to Heller Ehrman's
2 preparation of its Fourth Interim Fee Application and four monthly Cover Sheet
3 Applications. Extensive work was required in connection with the Fourth Interim Fee
4 Application, in which approximately \$3.1 million in fees and expenses were at issue. The
5 Application involved assembling and filing hundreds of pages of timesheets and other
6 exhibits; preparing detailed narrative descriptions of work performed; preparing for and
7 participating in the hearing; and preparing a Response to an Objection by the United States
8 Trustee. Preparation of Heller Ehrman's monthly Cover Sheet Applications also involved
9 substantial time and effort.

10 59. The timekeepers principally dedicated to Matter 82 during the Application
11 period were Adam M. Cole, David R. Luster and M. Brett Stone. Mr. Cole recorded 95 2
12 hours with a time value of \$32,558.40, Mr. Luster recorded 77.7 hours with a time value of
13 \$12,276.60, and Mr. Stone recorded 64.4 hours with a time value of \$7,856.80. Mr. Cole, a
14 shareholder, was assigned responsibility for managing the fee application process and cover
15 sheet application process, in large part because he has the lowest billing rate of all Heller
16 Ehrman shareholders working on the engagement. Mr. Luster and Mr. Stone are paralegals
17 assigned to assist Mr. Cole in this task.

18 60. **Matter No. 85: Appeals of FERC Orders — Dockets EL 00-95 et al.**
19 **Hours spent: 83.90; fees sought: \$11,483.00; expenses sought: \$10,011.66.** This matter
20 involves the appeals of FERC orders in Dockets EL00-95 and related dockets. On
21 December 19, 2001, FERC issued an appealable order resolving many of the outstanding
22 issues relating to refunds for overcharges in California power markets and prospective price
23 mitigation in California power markets. Over 50 parties, including PG&E, filed petitions
24 for review of the December 19, 2001, Order and its predecessor orders. A subsequent
25 FERC order was issued on May 15, 2002, and again over 50 parties filed petitions for
26 review. Those petitions were filed in both the D.C. Circuit and Ninth Circuit Courts of
27 Appeals, although many have been consolidated in the Ninth Circuit.

1 61. Heller Ehrman has been retained to represent PG&E in these appeals. During
2 the Application Period, Heller Ehrman provided legal advice and filed papers on PG&E's
3 behalf. On August 22, 2002, the Ninth Circuit stayed its pending appeals and remanded the
4 proceeding to FERC. Although the Ninth Circuit appeals were stayed, certain other appeals
5 had not been transferred from the D.C. Circuit, and Heller Ehrman represented PG&E with
6 respect to those appeals. Given the amounts at stake and the highly contested nature of the
7 issues, we expect that any additional FERC orders will again be appealed and that
8 proceedings will resume in the Ninth Circuit. We anticipate performing significant
9 additional work for PG&E as these appeals proceed, including representing PG&E on
10 litigation-related to matters concerning FERC's compliance with the Ninth Circuit remand.

11 62. **Matter No. 86: FERC Fact-Finding Investigation. Hours spent: 18.40;**
12 **fees sought: \$4,156.40; expenses sought: \$1,188.35.** This matter involves a proceeding
13 initiated by FERC in early 2002 to investigate activities in the electric and gas markets in
14 the western United States from January 2000 through December 2001. A series of
15 disclosures about potential market manipulation by Enron, and concerning other behavior by
16 other electric and gas market participants, prompted FERC to initiate a broad-reaching
17 investigation. PG&E is impacted by the investigation in two significant ways: (i) because
18 PG&E was a market participant in western electric and gas markets during the relevant
19 period, PG&E, like all market participants, has been required to comply with extensive
20 discovery requests propounded by FERC; (ii) because PG&E was a net buyer in electric and
21 gas markets during the relevant period, it may be able to recover significant sums
22 (potentially hundreds of millions or billions of dollars) if FERC finds that buyers in those
23 markets were overcharged as a result of wrongful behavior. Heller Ehrman has represented
24 PG&E in connection with both issues, counseling PG&E in its internal investigations to
25 comply with FERC discovery requests, and advising PG&E on relief that may be available
26 as a result of the investigation. We anticipated performing significant additional services for
27 PG&E as this investigation proceeds.

1 63. **Matter No. 87: Abbell Credit Corp., et al. v. Bank of America**
2 **Corporation, et al. Hours spent: 0; fees sought: \$0; expenses sought: \$168.56.** This
3 now-resolved matter involved claims by purchasers of commercial notes issued by PG&E
4 from Banc of America Securities, L.C.C. ("BAS"), one of the dealers appointed to sell the
5 notes and redeem them at maturity. Plaintiffs alleged that the notes were not prime quality
6 commercial paper as of the date of issuance and thus did not fall within the nonregistration
7 exemption of Section 3(a)(3) of the Securities Act of 1933. Plaintiffs' complaint alleged
8 three counts against BAS, the third being an alleged violation of Section 12(1) of the 1933
9 Act.

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

17 65. In light of BAS's position, PG&E sought legal representation from Heller
18 Ehrman to evaluate, among other things: (i) BAS's chances of recovery from PG&E in the
19 threatened litigation; (ii) the effect of the automatic stay in bankruptcy on any claim BAS
20 may have against PG&E; (iii) the risk that the pending litigation would have a preclusive
21 effect on any claim brought by BAS against PG&E; and (iv) the possibility that PG&E
22 could assist BAS resolve the litigation, while at the same time protecting its own interests.
23 Ultimately, PG&E provided BAS with a declaration intended to help resolve the Abbell
24 Credit litigation — namely, a declaration on behalf of PG&E establishing that the notes at
25 issue properly fell within the nonregistration exemption of Section 3(a)(3). After receiving
26 the declaration, BAS resolved the matter with plaintiffs through a mediator. It now appears
27 that BAS will not be pursuing any claim for indemnity against PG&E relating to the
28 settlement. Accordingly, it is unlikely that Heller Ehrman will be called on to perform any

1 significant additional services on this matter. The charges reflected in the accompanying
2 Time Records Exhibit (invoice for services through September 30, 2002) cover a small
3 amount of disbursements.

4 **66. Matter No. 88: Energy Crisis – Other FERC Electric Proceedings Hours**
5 **spent: 553.70; fees sought: \$155,672.59; expenses sought: \$5,592.47.⁷** This matter is
6 used to record time billed in connection with various FERC electric proceedings arising
7 from the 2000-2001 electric crisis. In addition to FERC dockets EL00-95 (Matter No. 63)
8 and ER01-889 (Matter No. 67), PG&E has been and will continue to be an active participant
9 in numerous other FERC electric proceedings relating to the 2000-2001 period in which
10 Heller Ehrman has been retained to provide legal services.

11 **67.** For example, during the Application Period, Heller Ehrman represented
12 PG&E in a FERC proceeding relating to the legality of several hundred millions of dollars
13 in “neutrality adjustment charges” assessed against PG&E in conjunction with PG&E’s
14 electric power purchases during the 2000-2001 period. Heller Ehrman also represented
15 PG&E in proceedings relating to the continuing rates to be charged by the California Power
16 Exchange, which sold power to PG&E during 2000 and the first half of January 2001
17 Heller Ehrman represented PG&E in various other proceedings relating to protection of
18 collateral and other funds currently retained by the California Power Exchange. Heller
19 Ehrman also represented PG&E in various proceedings initiated by FERC to investigate
20 whether certain sellers, including Enron, had engaged in improper actions during the period.
21 In addition, Heller Ehrman represented PG&E in numerous FERC proceedings relating to
22 the justness and reasonableness of charges for long-term power contracts entered into during
23 2000-2001.

24
25
26 ⁷ After Heller Ehrman filed its Cover Sheet Application for August 2002, Heller
27 Ehrman reduced its August charges for Matter No. 88 (originally \$60,673.59) by
28 \$15,434.80, to \$45,238.79. The adjusted August bill for Matter No. 88 is attached to the
accompanying Time Records Exhibit.

1 68. We anticipate being called upon to continue to provide advice and
2 representation to PG&E on this range of FERC proceedings, as well as others that may arise
3 concerning the California electric crisis.

4 **VII. REQUIRED DISCLOSURES AND CERTIFICATION**

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

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

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

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

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

3 73. 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 74. 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 (\$12,399,796.62); (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 75. 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 76. 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 \$3,246,985.89 and \$195,135.83; and to authorize PG&E to pay the allowed amounts
25 forthwith.

26 77. (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 3-22 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 78. The Firm has served a copy of this Application (without Exhibits) on the
12 Special Notice List in this case.

13 79. 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.

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

5
6 Dated: January 14, 2003

Respectfully submitted,

7 HELLER EHRMAN WHITE & McAULIFFE LLP

8
9 By: 

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