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5 **Attorneys for Official Committee of Unsecured Creditors**

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

10 In re

Case No. SF 01-30923 DM

11 PACIFIC GAS AND ELECTRIC  
12 COMPANY, a California corporation,

Chapter 11 Case

13 Debtor.

**NOTICE OF APPLICATION AND  
APPLICATION OF THE OFFICIAL  
COMMITTEE OF UNSECURED  
CREDITORS FOR ORDER (1)  
AUTHORIZING EXPANSION OF  
SERVICES TO BE RENDERED BY UBS  
WARBURG LLC; (2) APPROVING THE  
SENIOR UNSECURED BRIDGE  
FACILITY; AND (3) AUTHORIZING  
PAYMENT OF UNSECURED BRIDGE  
FACILITY FEES**

14 Federal I.D. No. 94-0742640

20 **Hearing:**

21 Date: March 14, 2003

22 Time: 1:30 p.m.

23 Place: 235 Pine Street, 22<sup>nd</sup> Floor  
San Francisco, California

Add to SA Mail Center  
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1 **NOTICE OF APPLICATION AND APPLICATION**

2 **PLEASE TAKE NOTICE** that, on March 14, 2003, at 1:30 p.m., in the Courtroom of  
3 the Honorable Dennis Montali, located at 235 Pine Street, 22nd Floor, San Francisco, California,  
4 the Official Committee of Unsecured Creditors in the Pacific Gas and Electric Company  
5 (“PG&E” or the “Debtor”) bankruptcy case (the “Case”) will request entry of an order pursuant  
6 to sections 105(a), 328(a), 330(a), and 1103(a) of title 11 of the United States Code, 11 U.S.C. §§  
7 101 et seq. (the “Bankruptcy Code”), Rule 2016 of the Federal Rules of Bankruptcy Procedure  
8 (the “Bankruptcy Rules”), and the October 30, 2002 Order Granting Application of Official  
9 Committee of Unsecured Creditors and California Public Utilities Commission (“Commission”)  
10 for Order Authorizing Retention and Employment of UBS Warburg LLC as Financing and  
11 Capital Markets Arranger (“UBS Retention Order”): (1) authorizing expansion of services to be  
12 rendered by UBS Warburg LLC (“UBS Warburg”); (2) approving the terms of the Senior  
13 Unsecured Bridge Facility (“Facility”) described in the Bridge Facility Agreement (“Facility  
14 Agreement”) (including the Summary of Principal Terms and Conditions (“Summary”) attached  
15 as Annex I thereto, the Bridge Facility Commitment Letter (“Commitment Letter”) attached as  
16 Exhibit “A” thereto, and Bridge Facility Fee Letter (“Fee Letter,”) attached as Exhibit “B”  
17 thereto; collectively, the “Facility Documents”), attached to the Declaration of Walter S. Hulse  
18 (the “Hulse Declaration”); and (3) authorizing payment of the fees set forth in the Fee Letter  
19 (“Facility Fees”) by the PG&E estate.

20 This Application is based on this Notice of Application, the accompanying Application,  
21 the Hulse Declaration filed concurrently herewith, the record in the Case and any evidence  
22 presented at or before the hearing on this Application.

23 **PLEASE TAKE FURTHER NOTICE** that any written opposition to the Application  
24 and the relief requested herein must be filed with the Court and served upon the appropriate  
25 parties no later than fourteen days prior to the hearing date. If there is no timely objection to the

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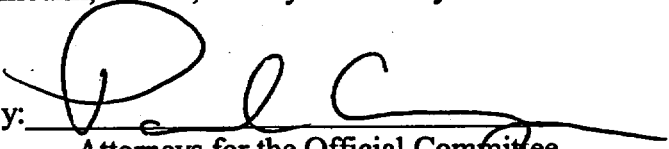
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requested relief, the Court may enter an order granting such relief without further hearing.

DATED: January 24, 2003

Respectfully,  
PAUL S. ARONZON  
ROBERT JAY MOORE  
MICHAEL SOROCHINSKY  
Milbank, Tweed, Hadley & McCloy LLP

By:   
Attorneys for the Official Committee  
of Unsecured Creditors

1 **APPLICATION**

2 **I. INTRODUCTION**

3 Through the Facility, UBS AG, Stamford Branch ("UBS AG") has agreed to  
4 backstop the issuance of up to \$1.5 billion in Senior Notes and Preferred Stock<sup>1</sup> under the  
5 California Public Utilities Commission's and Official Committee of Unsecured Creditors' Third  
6 Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code for Pacific Gas and  
7 Electric Company dated November 6, 2002 ("Joint Plan"). Approval of the Facility Documents  
8 and authorization for the payment of the Facility Fees will help facilitate the cash payment of all  
9 Allowed Claims in full, with interest, upon the Effective Date of the Joint Plan.

10 **II. BACKGROUND**

11 To effectuate the Joint Plan, the OCC and the Commission, as co-proponents,  
12 selected UBS Warburg to provide services as financing and capital market arranger in  
13 connection with the financing of the Joint Plan. The terms of UBS Warburg's retention by the  
14 OCC and the Commission were set forth in the October 2, 2002 engagement letter (the  
15 "Engagement Letter") signed by UBS Warburg, the OCC, and the Commission.

16 Through the UBS Retention Order, the Court approved the retention and  
17 employment of UBS Warburg pursuant to the Engagement Letter, and approved the payment of  
18 the retainer fees provided for in the Engagement Letter (the "Retainer Fees"), including monthly  
19 fees and reimbursement of expenses. The UBS Retention Order further provides that any  
20 additional fees or arrangements between the OCC and UBS Warburg are subject to a subsequent  
21 application and order of the Court. One of the additional arrangements delineated in the  
22 Engagement Letter is to arrange for a commitment with respect to all or a portion of the  
23 securities to be issued under the Joint Plan and to authorize payment of commitment fees  
24 commensurate with the scope of the commitment.

25 On November 15, 2002, UBS Warburg delivered to the OCC a Highly Confidential  
26 Letter described in section 2(b) of the Engagement Letter. In the Highly Confidential Letter, UBS

27 \_\_\_\_\_  
28 <sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the  
Commitment Letter.

1 Warburg stated that it was highly confident in its ability to arrange an aggregate of \$10.7 billion  
2 of financing in the form of the securities and credit facilities proposed under the Joint Plan.  
3 Nevertheless, to help to ensure that all creditors are paid in full, the OCC requested that UBS  
4 Warburg arrange for UBS AG to backstop the sale of the Senior Notes and Preferred Stock by  
5 issuing a commitment in the amount of \$1.5 billion in the form of the Facility described in the  
6 Facility Documents. UBS AG has agreed to provide the Facility.

7 The Facility Documents are comprised of the Bridge Facility Agreement  
8 (“Facility Agreement”) (including the Summary of Principal Terms and Conditions  
9 (“Summary”) attached as Annex I thereto, the Bridge Facility Commitment Letter  
10 (“Commitment Letter”) attached as Exhibit “A” thereto, and the Bridge Facility Fee Letter (“Fee  
11 Letter,”) attached as Exhibit “B” thereto; collectively, the “Facility Documents”).

12 Specifically, pursuant to the Facility Agreement to be entered into by and among  
13 the OCC and the Commission and UBS, and the Commitment Letter to be entered into by and  
14 among UBS and PG&E, UBS AG will commit to provide PG&E with the entire amount of the  
15 Facility upon the terms and subject to the conditions specified in the Commitment Letter, the  
16 Summary and the Fee Letter. The Fee Letter, in turn, specifies the fees to be paid with respect to  
17 the commitment to provide, and eventual funding of, the Facility. The Summary specifies the  
18 salient terms of the proposed Facility. The Facility Documents are hereby incorporated herein  
19 by reference.

20 The fees to be paid, as set forth more fully in the Facility Documents, in  
21 connection with the Facility are as follows:

- 22 a. Delivery Fee: One percent (1%) of the committed amount of  
23 the Facility (\$15 million), payable upon the execution and  
24 delivery of the Commitment Letter, following entry of the order  
25 granting the application.
- 26 b. Acceptance Fee: One percent (1%) of the committed amount of  
27 the Facility (\$15 million), payable upon PG&E’s execution of  
28 the Commitment Letter pursuant to an order of this Court.

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c. Ticking Fee: One half of one percent (0.5%) accruing from the date of the delivery of the Commitment Letter until funding of the Facility or termination or expiration of the Commitment Letter (approximately \$625,000 per month), whichever is earlier. The amount of the Ticking Fee shall be reduced by the amount of the Acceptance Fee actually paid. The Ticking Fee shall be payable on the closing date of the Facility or termination or expiration of the Commitment Letter, whichever is earlier.

d. Funding Fee: One percent (1%) of the actual funded amount (\$0 to \$15 million), payable on the date of funding of the Facility, if required.

e. Conversion Fee: Three percent (3%) of the principal amount of the Facility on the Maturity Date<sup>2</sup> or the date on which the Facility is refinanced.

**III. THE COURT SHOULD APPROVE THE TERMS OF THE FACILITY DOCUMENTS AND AUTHORIZE PAYMENT OF THE FACILITY FEES**

Bankruptcy Code section 1103(a) authorizes an unsecured creditors' committee to employ professional persons to enable a committee to fulfill its role in a chapter 11 bankruptcy case. Bankruptcy Code sections 328(a) and 330(a) allow the Court to award reasonable compensation for actual and necessary services rendered by the professional person, taking into account factors such as the time spent on such services, the rates charged for such services, whether the services were necessary or beneficial, whether the services were performed within a reasonable amount of time, and whether the compensation is reasonable.

Here, the services provided are necessary and timely. To help ensure payment of all Allowed Claims in full, in cash, with interest under the Joint Plan, pursuant to the Facility Documents, UBS Warburg has agreed to arrange the Facility in the amount of \$1.5 billion. This

<sup>2</sup> As that term is defined in the Facility Documents.

1 Facility will be used to help pay Allowed Claims in the event that the Senior Notes and/or  
2 Preferred Stock to be issued under the Joint Plan cannot be sold into the market. During the first  
3 year, the Facility Documents contemplate that reorganized PG&E will attempt to refinance the  
4 Facility. If the refinancing cannot be obtained, the Facility will convert into 10-year notes, thus  
5 negating any liquidity risks to reorganized PG&E stemming from the Facility's one-year  
6 maturity.

7           The Facility is a fiscally responsible financing structure that will help to ensure  
8 payment of Allowed Claims in full, in cash, while at the same time minimizing expense to the  
9 PG&E estate. The OCC could have requested that UBS Warburg also arrange for the remainder  
10 of the financing required under the Joint Plan. However, as UBS Warburg testified at trial and  
11 consistent with the Highly Confident Letter, because there is little risk that the other Joint Plan  
12 securities will not be sold into the market, the OCC did not request such a backstop. Although  
13 UBS Warburg and the OCC believe that the Senior Notes and Preferred Stock will also be sold  
14 into the market, to facilitate timely payment of all Allowed Claims in full, in cash, the OCC has  
15 requested, and UBS Warburg has agreed to arrange the Facility, which confers a significant  
16 benefit upon creditors at a reasonable cost to the PG&E estate. With the Facility in place  
17 creditors will know with certainty that the most difficult financing to be arranged under the Joint  
18 Plan (i.e. the Senior Notes and Preferred Stock) will be available to fund distributions to  
19 creditors.

20           Moreover, as set forth in the Hulse Declaration, the terms of the Facility set forth  
21 in the Facility Documents and the Facility Fees requested are market-based and reasonable.  
22 Accordingly, the Court should approve the Facility Documents and authorize payment of the  
23 Facility Fees from the PG&E estate.

24           Finally, the Court is authorized to grant the relief requested herein under  
25 Bankruptcy Code section 105(a) because the relief is in aid of implementation of the Joint Plan.

#### 26 **IV. ADDITIONAL DISCLOSURES**

27           Pursuant to the UBS Retention Order, UBS Warburg has been paid \$2 million in  
28 Retainer Fees from the PG&E estate pursuant to paragraph 2(a)(i) of the Engagement Letter.

1 Subsequent to the November 15, 2002 delivery by UBS Warburg to the OCC of the Highly  
2 Confident Letter, UBS Warburg received an additional \$6 million in Retainer Fees from the  
3 PG&E estate pursuant to paragraph 2(a)(iii) of the Engagement Letter. UBS Warburg has not  
4 received any other compensation from the PG&E estate.

5 The services being provided are primarily transactional in nature, and the Facility  
6 Fees are structured accordingly. Such compensation is consistent with UBS Warburg's and UBS  
7 AG's normal and customary compensation for transactional work of this type, which requires the  
8 level and scope of services and the issuance of the types of financial commitments contemplated  
9 by the Engagement Letter and the Facility Documents. UBS Warburg and the OCC also believe  
10 that the foregoing compensation arrangements are market-based and reasonable.

11 As set forth in the Hulse Declaration, UBS Warburg and UBS AG have not  
12 shared or agreed to share any of its compensation with any other person, other than (i) a  
13 managing director, professional or employee of UBS Warburg or UBS AG, or (ii) UBS Warburg  
14 has the right to syndicate the Facility and allocate portions of the Facility Fees as part of the  
15 syndication to the syndication parties.

#### 16 V. APPROVAL DEADLINE

17 The ability of UBS Warburg to arrange the Facility, and the economic terms set  
18 forth in the Fee Letter, are based on current market conditions. Accordingly, it is a condition to  
19 UBS Warburg's and UBS AG's willingness to provide the Facility on the terms described in the  
20 Facility Documents that the Court enter an order of approval on or before March 15, 2003.  
21 Consequently, although the OCC is not seeking to have the matter heard on shortened time, the  
22 OCC respectfully requests the Court grant priority consideration to this matter.

#### 23 VI. CONCLUSION

24 For all of the foregoing reasons, the OCC requests that the Court enter an order

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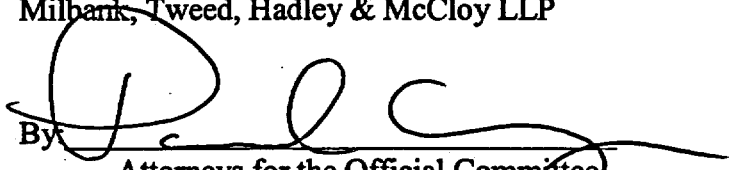


1 authorizing expanded services by UBS Warburg, approving the Facility Documents, and  
2 authorizing payment of the Facility Fees from the PG&E estate.

3 DATED: January 24, 2003

4 Respectfully,

5 PAUL S. ARONZON  
6 ROBERT JAY MOORE  
7 MICHAEL SOROCHINSKY  
8 Milbank, Tweed, Hadley & McCloy LLP

9 By   
10 Attorneys for the Official Committee  
11 of Unsecured Creditors

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