

1 JAMES L. LOPES (No. 63678)
2 JEFFREY L. SCHAFFER (No. 91404)
3 GARY M. KAPLAN (No. 155530)
4 HOWARD, RICE, NEMEROVSKI, CANADY,
5 FALK & RABKIN
6 A Professional Corporation
7 Three Embarcadero Center, 7th Floor
8 San Francisco, California 94111-4065
9 Telephone: 415/434-1600
10 Facsimile: 415/217-5910

11 Attorneys for Debtor and Debtor in Possession
12 PACIFIC GAS AND ELECTRIC COMPANY

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

16 In re

17 PACIFIC GAS AND ELECTRIC
18 COMPANY, a California corporation,

19 Debtor.

20 Federal I.D. No. 94-0742640

Case No. 01-30923 DM

Chapter 11 Case

Date: September 26, 2003

Time: 10:30 a.m.

Place: 235 Pine Street, 22nd Floor
San Francisco, California

Judge: Hon. Dennis Montali

21
22 DECLARATION OF WALTER HULSE IN SUPPORT OF MOTION FOR
23 AUTHORITY TO ENTER INTO CERTAIN HEDGING TRANSACTIONS IN
24 CONNECTION WITH FINANCING UNDER PROPOSED PLAN OF
25 REORGANIZATION, AND TO INCUR SECURED DEBT RELATED THERETO
26
27
28

HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN
A Professional Corporation

BKRPO1

1 1. I am a Managing Director of UBS Securities LLC (including any reference
2 to its prior name of UBS Warburg LLC, hereinafter referred to as "UBS Securities"), an
3 affiliate of UBS AG, which is a proposed counterparty with respect to the Interest Rate
4 Hedges that Pacific Gas and Electric Company, the debtor in the above-captioned
5 bankruptcy case ("PG&E"), seeks authority to enter into pursuant to PG&E's Motion For
6 Authority To Enter Into Certain Hedging Transactions In Connection With Financing Under
7 Proposed Plan Of Reorganization, And To Incur Secured Debt Related Thereto (the
8 "Motion").¹ I make this declaration (this "Declaration") in support of the Motion and in
9 support of a finding that UBS AG has acted in "good faith," as such term is defined in
10 Section 364(e) of the Bankruptcy Code, in entering into Interest Rate Hedges and Hedge
11 Agreements with PG&E as described in the Motion. This Declaration is based on my
12 personal knowledge (except as to any matters stated on information and belief, and as to
13 such matters, I am informed and believe they are true) and upon my review of the Motion. If
14 called as a witness, I could and would testify competently to the facts stated herein.
15

16 2. UBS Securities, an affiliate of UBS AG, and certain other affiliates of UBS
17 AG (collectively, "UBS"), have provided and may in the future provide investment banking
18 and other services to PG&E Corporation (the "Corporation"). In addition, UBS Securities
19 has been retained to provide services as financing and capital markets arranger by the
20 California Public Utilities Commission (the "Commission") and Official Committee of
21 Unsecured Creditors (the "Committee" or the "OCC") in connection with their joint plan,
22
23
24
25
26

27 ¹ Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to such terms in the
28 Motion.

1 now as amended the Commission's and Committee's Third Plan of Reorganization Under
2 Chapter 11 of the Bankruptcy Code for Pacific Gas and Electric Company dated November
3 6, 2002 (the "Joint Plan"). The terms of UBS Securities' retention by the OCC and the
4 Commission were set forth in the October 2, 2002 engagement letter (the "Engagement
5 Letter") signed by UBS Securities, the OCC and the Commission. The Bankruptcy Court
6 authorized UBS Securities' retention under the Engagement Letter in the October 30, 2002
7 Order Granting Application of Official Committee of Unsecured Creditors and California
8 Public Utilities Commission for Order Authorizing Retention and Employment of UBS
9 Warburg LLC as Financing and Capital Markets Arranger (the "UBS Retention Order").
10 Through the UBS Retention Order, the Court approved the payment of retainer fees provided
11 for in the Engagement Letter, including monthly fees and reimbursement of expenses. UBS
12 Securities also delivered to the OCC a Highly Confidential Letter described in Section 2(b) of
13 the Engagement Letter. The compensation received by UBS Securities in connection
14 therewith has been previously disclosed in connection with the applicable applications to the
15 Bankruptcy Court. Each of the foregoing engagements and the fees in connection therewith
16 are separate and distinct from the Interest Rate Hedge transactions that are the subject of the
17 Motion.
18
19
20
21

22 3. As set forth previously in connection with the retention of UBS Securities
23 in this case, UBS has held and may in the future hold debt and/or equity securities issued by
24 PG&E, the Corporation, and/or various affiliates.
25

26 4. Because of the magnitude of PG&E's Chapter 11 case and the relatively
27 large number of parties in interest, it is impractical, if not impossible, for UBS to represent
28

1 that it has disclosed all of its relationships with all of the parties in interest herein; it should
2 be assumed that UBS has or may in the future have substantial commercial relationships
3 with numerous parties in interest in this case that engage in transactions in the financial
4 markets.
5

6 5. UBS AG has extensive experience in arranging and engaging in hedging
7 transactions, including transactions of the type defined as "Interest Rate Hedges" in the
8 Motion. Based on such experience, UBS AG is prepared to enter into Interest Rate Hedges
9 and Hedge Agreements with PG&E, even though UBS AG is not aware of any substantially
10 similar precedent for the particular Interest Rate Hedges contemplated pursuant to the
11 Motion in view of PG&E's status as a Chapter 11 debtor.
12

13 6. UBS AG has conducted extensive, arms-length negotiations with PG&E
14 regarding the Interest Rate Hedges and the prospective Hedge Agreements, and the final
15 Hedge Agreements that result will be the product of such arms-length negotiations. UBS
16 AG and PG&E have been represented by separate counsel in connection with such
17 negotiations.
18

19 7. UBS believes that any investment-grade-rated financial institution
20 proposed to be a counterparty to any Interest Rate Hedge with PG&E will require (acting on
21 a commercially reasonable basis), as a condition to entering into any Hedge Agreement(s)
22 with PG&E and as a term of such Hedge Agreement(s), the bankruptcy-related terms
23 described in the Motion, including, without limitation, (i) that if PG&E requires a
24 counterparty to post collateral to secure PG&E's credit exposure to such counterparty above
25 negotiated threshold levels, PG&E too will be required to post collateral to secure the
26
27
28

1 counterparty's exposure to PG&E and that PG&E will be required to post such collateral on
2 a priming basis under Bankruptcy Code Section 364(d), and (ii) that the counterparty has
3 immediate and self-executing relief from the automatic stay of Bankruptcy Code Section
4 362(a) to enforce its rights and remedies under the Hedge Agreement(s) it enters into with
5 PG&E. UBS believes that the bankruptcy-related provisions that will be included in the
6 Hedge Agreements as described in the Motion are fair and reasonable based upon the
7 benchmarks and standards for financing transactions with Chapter 11 debtors, and that
8 comparable terms would be required by other institutional counterparties (acting on a
9 commercially reasonable basis) if PG&E entered into substantially similar hedge
10 transactions with other institutional counterparties.
11
12

13 8. UBS has made and will make no payment promise or undertaking to any
14 officer or director of PG&E, the Corporation or any of their affiliates as a *quid pro quo* for
15 entering into any Interest Rate Hedges or Hedge Agreements.
16

17 I declare under penalty of perjury under the laws of the United States of
18 America and the State of California that the foregoing is true and correct. Executed this 29th
19 day of August, 2003 at Summit, New Jersey.
20

21
22 

23 _____
WALTER HULSE
24
25
26
27
28