

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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<b>In re:</b>	)	<b>Case No. 01-16034 (AJG)</b>
	)	
<b>ENRON CORP., et al.,</b>	)	<b>Jointly Administered</b>
	)	
<b>TRUSTEES</b>	)	<b>Chapter 11</b>
	)	

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**FIRST AND FINAL APPLICATION FOR ALLOWANCE  
OF COMPENSATION AND REIMBURSEMENT OF FEES AND EXPENSES  
BY BAKER & HOSTETLER, L.L.P., COUNSEL FOR THE TRUSTEE,  
CLOYSES PARTNERS**

Baker & Hostetler, L.L.P. ("B&H" or "Applicant"), files its First and Final Application for Allowance of Compensation and Reimbursement of Fees and Expenses (the "Application") for professional services rendered as counsel for Trustee, Cloyses Partners ("Cloyses" or the "Trustee"), and in support thereof respectfully states as follows.

**I.**

**Factual and Procedural Background**

1. By Order of the Court dated February 27, 2003, (the "Wind Trusts Order"), the Court approved the Trustees' Motion for an order, pursuant to section 363 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 6004, approving the execution, delivery and performance of (1) the Wind Systems Trust Agreement, (2) the Wind Development Trust Agreement, (3) The Management Agreement, and (4) certain related documents and agreements in connection therewith. The Wind Trusts Order appointed Cloyses Partners LLC ("Cloyses") as the Managing Trustee of the Enron Wind Trusts. By the express terms of the trust documents, the managing trustee was authorized to retain counsel without the need for any court approval.

At the time of its appointment, Cloyses selected as its counsel the law firm of Baker & Hostetler LLP.

2. Cloyses was managing Partner until April 25, 2003. During its time as Managing Trustee, Baker & Hostetler represented Cloyses and later in the filing of this fee application

## II.

### **FEES AND EXPENSES REQUESTED**

3. Applicant requests, in this Application, allowance of all fees and expenses in the amounts of \$69,766.00 and \$1,630.38, respectively for the period February 1, 2003 through June 30, 2003. Moreover, Applicant requests approval of all fees and expenses incurred in preparation and filing of this Application in the amount, for a total of \$71,396.38.

4. Applicant has represented Cloyses since February 1, 2003 and the legal services this Application covers were performed for the Trustee and not at the request of any other party or entity.

5. **Exhibit "A"** attached hereto contains (i) an itemized description of the services performed, (ii) the date the services were performed, (iii) the amount of time spent performing those services, and (iv) the identity of the person performing the services during the Application Period. These fees are summarized in the charts attached hereto as **Exhibit "B"**.

6. Applicant incurred expenses during this period total \$1,630.38. These expenses are summarized in the chart attached hereto as **Exhibit "C"** Applicant bills its clients at actual cost for facsimiles, photocopies and third party charges.

7. All members of Applicant involved in this case have made a deliberate effort to avoid any unnecessary duplication of work and Applicant believes no duplication has occurred.

8. Applicant knows compensation will be paid to attorneys for legal work and that the dollar value of a particular task is not enhanced simply because a lawyer performs the work. Applicant has taken considerable care to assure that attorneys perform legal work only and to maximize its use of paralegals and staff where it is appropriate.

9. Pursuant to the provisions of Bankruptcy Rule 2016(a), Applicant has not shared or agreed to share with any other entity or law firm the compensation received, allowance of which is requested herein, except to the extent that the funds received may be distributed to partners of Applicant. All professional services for which allowance is requested herein were performed by Applicant for and on behalf of the Trustee and not on behalf of any other entity or party in interest.

### III.

#### **LEGAL AUTHORITIES RELEVANT TO AWARDING REASONABLE COMPENSATION DURING THE PERIOD FEBRUARY 1, 2003 THROUGH JUNE 30, 2003**

10. It is well settled that the “lodestar” method to calculate attorneys fees is the best means of determining attorney fees in bankruptcy cases *Pennsylvania v. Delaware Valley Citizens Council for Clean Air*, 483 U.S. 711 (“Delaware Valley II”), on remand, 826 F.2d 238 (3d Cir. 1987; *United States Football League v. National Football League*, 887 F.2d 408, 413 (2d Cir. 1989), cert. denied, 493 U.S. 1071 (1990); *Lindy Bros. Builders, Inc. v. American Radiator and Standard Sanitary Corp.*, 487 F.2d 161 (3d Cir. 1973), vacated on other grounds, 540 F.2d 102 (3d Cir. 1977); *In re Cena’s Fine Furniture, Inc.* 109 B.R. 575 (E.D.N.Y. 1990); *In re Drexel Burnham Lambert Group Inc.*, 133 B.R. 13, 21 (Bankr. S.D.N.Y. 1991). The lodestar is the number of hours reasonably expended multiplied by “the prevailing hourly rate in the community for similar work.” *Id.* The request for fees is then adjusted upward or downward

based on the factors identified in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d. 714 (5th Cir. 1974). These are:

- a. time and labor expended;
- b. experience, reputation, and ability;
- c. skill required for performance of services;
- d. the novelty and difficulty of issues;
- e. customary fees;
- f. time involved and results obtained;
- g. preclusion from other employment;
- h. contingent nature of fees;
- i. time limitations and other circumstances;
- j. the undesirability of the case;
- k. nature and length of relationship; and
- l. awards in similar cases.

A detailed description of the application of each of these twelve factors is set forth below.

**A. Time and Labor Expended.**

11. The following is a list of attorneys with Applicant who devoted time to performing services for the Trustee during this Application Period and their billing rates:

<b><u>Attorney</u></b>	<b><u>Hours</u></b>	<b><u>Hourly Rate</u></b>	<b><u>Fees</u></b>
Edward L. Ripley	46.00	395.00	18,170.00
Shari L. Heyen	12.80	320.00	4,096.00
John W. English	96.60	335.00	32,361.00
David B. Waller	4.70	235.00	1,104.50

Robert M. Wolin	.80	360.00	288.00
Matthew H. Charity	8.20	260.00	2,132.00
Yuliya V. Balabon	1.70	165.00	280.50

12. Applicant utilized the talents of its paralegal staff whenever possible for tasks that did not involve the rendering of legal service, but rather required routine preliminary drafting, subject to attorney review, or the sorting and allocation of information, in order to reduce the overall fees in this matter without any sacrifice to the services being rendered. Applicant submits that its use of its paralegals and case assistants has resulted in a smooth and efficient administration of this case and correspondingly efficient utilization of Applicant's attorneys.

<u>Legal Assistant</u>	<u>Hours</u>	<u>Hourly Rate</u>	<u>Fees</u>
Claudia J. Pratka	71.90	140.00	10,066.00
Caroline A. Trimble	7.60	135.00	1,026.00
Debbie J. Calvert	2.20	110.00	242.00

13. Applicant's blended rate of \$276.30 is reasonable under the circumstances. The actual time expended by Applicant during the Final Application Period is set forth in detail in **Exhibit "A"**.

**B. Experience Reputation and Ability.**

14. Applicant possesses a regional, as well as national reputation for its more than 60 years of experience in bankruptcy matters. Applicant's attorneys have appeared before courts in this district and throughout the United States in bankruptcy cases on behalf of debtors, trustees, receivers, creditors and creditors' committees for numerous years. Applicant's attorneys possess the experience, reputation and ability to merit an award of the requested compensation and

reimbursement. Attached hereto as **Exhibit “D”** are biographies of all Applicant's attorneys and paralegals who billed time during the Application Period.

**C. Skill Required for Performance of Services.**

15. Professional services rendered in this case have been performed by attorneys with broad experience and a high level of skill in the areas for which they have been employed. Biographies of those members of Applicant who have participated in this case are set forth in **Exhibit “D”** to this Application. Applicant submits that its attorneys, with varying levels of experience and seniority, have been used effectively and efficiently to meet the requirement of the tasks assigned. Applicant's expertise and experiences in these matters has enabled this case to progress in an efficient manner to the benefit of the Trustee and its creditors.

**D. The Novelty and Difficulty of Issues.**

16. Applicant's representation in this bankruptcy proceeding has involved a number of unusual questions of energy and bankruptcy law. These issues were attributable to the Trustee's business and the interests of the trusts involved. Applicant played an active role in the dealing with most or all of such problems.

**E. Customary Fees.**

17. For the Application period, Applicant has applied for allowance of compensation for fees that reflect its customary billing rates charged to clients by Applicant. These rates are consistent with those of other law firms of requisite and comparable skill and ability. Such hourly rates compare very favorably with the community standard at this time.

**F. Time Involved and Results Obtained.**

18. The issues facing the Enron Wind Trusts and Cloyses as Managing Trustee required the expenditure of substantial time and effort on the part of the professionals of

Applicant. Applicant represents that the time expended is commensurate with the size and complexity of this case and the number of significant legal issues involved in this case to date. Applicant uses the task codes recommended by the U.S. Trustee several years ago. As shown on **Exhibit “B”** the professional services rendered by Applicant on behalf of the Trustee have been divided into discrete categories which further clarify the necessity and benefit of the services rendered. These categories are as follows:

**B100 Administration**

**B110 Case Administration**. Coordination and compliance matters, including preparation of financial affairs; schedules; list of contracts; United States Trustee interim statements and operating reports; contacts with the United States Trustee; general creditor inquiries.

**B120 Asset Analysis and Recovery**. Identification and review of potential assets including causes of action and non-litigation recoveries.

**B130 Asset Disposition**. Sales, abandonment and transaction work related to asset disposition.

**B140 Relief from Stay/Adequate Protection Proceedings**. Matters relating to termination or continuation of automatic stay under § 362 and motions for adequate protection.

**B150 Meetings of and Communications with Creditors**. Preparing for and attending the conference of creditors, the § 341 (a) meeting and other creditors' committee meetings.

**B160 Fee/Employment Applications**. Preparations of employment and fee applications for self or others; motions to establish interim procedures.

**B170 Fee/Employment Objections**. Review of and objections to the employment and fee applications of others.

**B180 Avoidance Action Analysis.** Review of potential avoiding actions under Sections 544-549 of the Code to determine whether adversary proceedings are warranted.

**B185 Assumption Rejection of Leases and Contracts.** Analysis of leases and executory contracts and preparation of motions specifically to assume or reject.

**B190 Other Contested Matters (excluding assumption/rejection motions).** Analysis and preparation of all other motions, opposition to motions and reply memoranda in support of motions.

**B195 Non-Working Travel.** Non-working travel where the court reimburses at less than full hourly rates.

**B200 Operations**

**B210 Business Operations.** Issues related to Trustee-in-possession operating in chapter 11 such as employee, vendor, tenant issues and other similar problems.

**B220 Employee Benefits/Pensions.** Review issues such as severance, retention, 401 K coverage and continuance of pension plan.

**B230 Financing Cash Collections.** Matters under §§ 361, 363 and 364 including cash collateral and secured claims; loan document analysis.

**B240 Tax Issues** Analysis and advice regarding tax-related issues, including the preservation of net operating loss carry forwards.

**B250 Real Estate.** Review and analysis of real estate-related matters other than 8185, including purchase agreements and lease provisions (e.g., common area maintenance clauses).

**B260 Board of Directors Matters.** Preparation of materials for and attendance at Board of Directors meetings; analysis and advice regarding corporate governance issues and



review and preparation of corporate documents (e.g., Articles, Bylaws, employment agreements, compensation plans, etc.)

**B300 Claims and Plan**

**B310 Claims Administration and Objections.** Specific claim inquiries; bar date motions; analyses, objections and allowances of claims.

**B320 Plan and Disclosure Statement (Including Business Plan).** Formulation, presentation and confirmation; compliance with the plan confirmation order, related orders and rules; disbursement and case closing activities, except those related to the allowance and objections to allowance of claims.

**B400 Bankruptcy-Related Advice**

**B410 General Bankruptcy Advice/Opinions.** Analysis, advice and/or opinions regarding potential bankruptcy-related issues, where no bankruptcy case has been filed.

**B420 Restructurings.** Analysis, consultation and drafting in connection with the restructuring of agreements, including financing agreements, where no bankruptcy case has been filed.

19. The attached **Exhibit “B”** details the time involved for the categories of the legal services Applicant rendered. Applicant believes these services were performed as effectively and efficiently as possible and that the time expended is commensurate with the issues and objectives involved. Set forth below is a summary of the results Applicant has obtained in the context of the status of this case.

20. During the period of the Application in this case, Applicant was involved in a multitude of tasks.

21. Applicant believes that the results obtained have been extremely beneficial to the Enron Wind Systems Trusts and the bankruptcy estate and that those results were instrumental in obtaining a trust agreement and a consensual plan for business operations.

**G. Preclusion from Other Employment.**

22. While Applicant was not precluded from other employment during the Application Period, the professionals of Applicant who have devoted time to this case were prevented from working on other matters.

**H. Contingent Nature of Fees.**

23. Applicant's agreement states that Applicant agreed to represent the Trustee on the basis of customary hourly rates and that the Applicant would also receive reimbursement for out-of-pocket expenses. As is customary bankruptcy practice, allowance of Applicant's fees and expenses are subject to final approval of the Court.

**I. Time Limitations and Other Circumstances.**

24. There were no significant time limitations involved in this case.

**J. The Undesirability of the Case.**

25. Undesirability has not been a factor in this proceeding, except to the extent of the contingency of the allowance of the fee.

**K. Nature and Length of Relationship.**

26. Applicant was retained by the Trustee as counsel pursuant to an Order of this Court effective February 27, 2003. Applicant had no prior professional relationship with the Trustee.

**L.     Awards in Similar Cases.**

27.     Applicant's fees incurred in representing the Trustee during the Application Period are consistent with fees incurred in other similar cases.

**IV.**

28.     Applicant requests in this Application, final allowance of all fees and expenses in the aggregate amount of \$71,396.36. Of this sum, \$47,547.08 has already been paid representing a portion of the expenses and 80% of the fees. Thus, Applicant requests that the Enron Wind Trusts, which are not debtors, be ordered to pay all unpaid fees and expenses in total amount of \$23,849.28.

**V.**

**CONCLUSION**

29.     Applicant submits that the time records provided in **Exhibit "A"** provide the Court with an involved summary of the activities of counsel in this case. The summaries of all fees incurred separated by task has been included as **Exhibits "C"**. Additionally, Applicant has necessarily incurred out-of-pocket expenses in connection with its representation of the Trustee. Careful records of these expenditures were maintained and included in **Exhibit "C"** to this Application.

30.     Applicant submits that the foregoing services rendered by Applicant's experienced attorneys and staff fully warrant the allowance of all fees requested by Applicant herein under the twelve factors identified by the Fifth Circuit in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). Moreover, Applicant's fees reflect a deliberate attempt by Applicant to have kept fees and expenses to a minimum. Thus, Applicant's request for allowance of its fees is amply justified and should be granted in its entirety.

WHEREFORE, Baker & Hostetler, L.L.P., Applicant herein, requests that the Court grant its Application and approve an order which incorporates the following:

- a. Final approval of all fees incurred in the amounts of \$69,766 .
- b. Final approval for all expenses in the amount of \$1,630.38 incurred by Baker & Hostetler, L.L.P. for of out-of-pocket expenses.
- c. Payment of all unpaid fees and expenses in the amount of \$23,849.28 payable in full within 10 days after court order is entered.
- d. Such and other further relief as may be just and equitable.

Respectfully submitted this 30th day of September, 2003.

BAKER & HOSTETLER, LLP

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