

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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*In re* :

NRG ENERGY, INC., et al. :

Debtors. :

Chapter 11

Case No. 03-13024 (PCB)

(Jointly Administered)  
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**APPLICATION OF KIRKLAND & ELLIS LLP AS (I) ATTORNEYS FOR CERTAIN DEBTORS AND DEBTORS IN POSSESSION FOR FINAL ALLOWANCE OF COMPENSATION FOR PROFESSIONAL SERVICES RENDERED AND FOR REIMBURSEMENT OF ACTUAL AND NECESSARY EXPENSES INCURRED FROM MAY 14, 2003 THROUGH NOVEMBER 25, 2003; AND (II) ATTORNEYS FOR DEBTORS AND DEBTORS IN POSSESSION LSP-NELSON ENERGY, LLC, NRG NELSON TURBINES LLC AND NRG MCCLAIN LLC FOR SECOND INTERIM ALLOWANCE OF COMPENSATION FOR PROFESSIONAL SERVICES RENDERED AND FOR REIMBURSEMENT OF ACTUAL AND NECESSARY EXPENSES INCURRED FROM SEPTEMBER 1, 2003 THROUGH NOVEMBER 25, 2003**

NAME OF APPLICANT:	KIRKLAND & ELLIS LLP
AUTHORIZED TO PROVIDE PROFESSIONAL SERVICES TO:	DEBTORS
DATE OF RETENTION:	JUNE 2, 2003 ( <i>NUNC PRO TUNC</i> TO MAY 14, 2003)
PERIOD FOR WHICH COMPENSATION AND REIMBURSEMENT IS SOUGHT:	MAY 14, 2003 THROUGH NOVEMBER 25, 2003
AMOUNT OF COMPENSATION REQUESTED:	\$13,673,650. <sup>00</sup>
AMOUNT OF EXPENSE REIMBURSEMENT REQUESTED:	\$1,552,352. <sup>14</sup>
TOTAL COMPENSATION AND EXPENSE REIMBURSEMENT REQUESTED:	\$15,226,002. <sup>14</sup>
TOTAL COMPENSATION AND EXPENSES PREVIOUSLY REQUESTED AND AWARDED:	NONE

KIRKLAND & ELLIS LLP  
 Citigroup Center  
 153 East 53<sup>rd</sup> Street  
 New York, New York 10022  
 Telephone: (212) 446-4800  
 Facsimile: (212) 446-4900  
 Matthew A. Cantor (MC 7727)  
 Robert G. Burns (RB 0970)  
 Leonard A. Budyonny (LB 4194 )

Attorneys for Debtors and Debtors in Possession

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

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In re	:	Chapter 11
	:	
NRG ENERGY, INC., et al.	:	
Debtors.	:	Case No. 03-13024 (PCB)
	:	
-----	x	(Jointly Administered)

**THE FINAL FEE APPLICATION APPLIES TO DEBTORS MARKED WITH “■” BELOW:**

**THE SECOND INTERIM FEE APPLICATION APPLIES TO DEBTORS MARKED WITH “□” BELOW:**

- |                                    |  |
|------------------------------------|--|
| ■ NRG Energy, Inc.                 | ■ NRG Power Marketing Inc.             |
| ■ Arthur Kill Power LLC            | ■ NRG Capital LLC                      |
| ■ Astoria Gas Turbine Power LLC    | ■ NRG Finance Company I LLC            |
| ■ Berrians I Gas Turbine Power LLC | ■ NRG Central U.S. LLC                 |
| ■ Big Cajun II Unit 4 LLC          | ■ NRG Eastern LLC                      |
| ■ Connecticut Jet Power LLC        | ■ NRGenerating Holdings (No. 23) B.V.  |
| ■ Devon Power LLC                  | ■ NRG New Roads Holdings LLC           |
| ■ Dunkirk Power LLC                | ■ NRG Northeast Generating LLC         |
| ■ Huntley Power LLC                | ■ NRG South Central Generating LLC     |
| ■ Louisiana Generating LLC         | ■ Oswego Harbor Power LLC              |
| ■ Middletown Power LLC             | ■ Somerset Power LLC                   |
| ■ Montville Power LLC              | ■ South Central Generation Holding LLC |
| ■ Northeast Generation Holding LLC | ■ Norwalk Power LLC                    |
| □ NRG Nelson Turbines LLC          | □ NRG McClain LLC                      |
|                                    | □ LSP-Nelson Energy, LLC               |

**APPLICATION OF KIRKLAND & ELLIS LLP AS (I) ATTORNEYS FOR CERTAIN DEBTORS AND DEBTORS IN POSSESSION FOR FINAL ALLOWANCE OF COMPENSATION FOR PROFESSIONAL SERVICES RENDERED AND FOR REIMBURSEMENT OF ACTUAL AND NECESSARY EXPENSES INCURRED FROM MAY 14, 2003 THROUGH NOVEMBER 25, 2003; AND (II) ATTORNEYS FOR DEBTORS AND DEBTORS IN POSSESSION LSP-NELSON ENERGY, LLC, NRG NELSON TURBINES LLC AND NRG MCCLAIN LLC FOR SECOND INTERIM ALLOWANCE OF COMPENSATION FOR PROFESSIONAL SERVICES RENDERED AND FOR REIMBURSEMENT OF ACTUAL AND NECESSARY EXPENSES INCURRED FROM SEPTEMBER 1, 2003 THROUGH NOVEMBER 25, 2003**

TO THE HONORABLE PRUDENCE CARTER BEATTY,  
UNITED STATES BANKRUPTCY JUDGE:

Kirkland & Ellis LLP (“K&E”), attorneys for the above-captioned debtors and debtors in possession (the “Debtors”), submits this fee application (the “Application”) pursuant to sections 330 and 331 of title 11 of the United States Code (the “Bankruptcy Code”), Rule 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), General Order M-151, Amended Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases (the “Local Guidelines”), and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330 effective January 30, 1996 (the “UST Guidelines”), and the Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals, entered in these cases on May 19, 2003 (the “Administrative Order” and, collectively with the UST Guidelines and the Local Guidelines, the “Guidelines”), for:

(a) Allowance and approval on a final basis of interim compensation for professional services rendered and for reimbursement of actual and necessary expenses incurred in connection with such services from May 14, 2003 through and including November 25, 2003 (the “Total Compensation Period”), without prejudice to K&E’s right to seek additional compensation for professional services performed and expenses incurred pursuant to paragraph 30 herein;<sup>1</sup>

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<sup>1</sup> The fees for professional services rendered and expenses incurred during the Total Compensation Period include the fees and expenses incurred in connection with K&E’s representation of NRG McClain LLC (Case No. 03-15205), LSP-Nelson Energy, LLC (Case No. 03-13652) and NRG Nelson Turbines LLC (Case No. 03-13653), whose bankruptcy cases are pending before this Court. Accordingly, in this Application K&E is seeking this Court’s approval of such fees and expenses on a second interim basis. With respect to these ongoing bankruptcy proceedings, K&E will continue to submit its monthly fee statements and, when appropriate, file its final fee application in accordance with the Guidelines, as well as pursuant to this Court’s following two orders: (i) Order Pursuant to Section 105(a) of the Bankruptcy Code (A) Confirming the Applicability to NRG McClain of Certain Orders in the NRG Debtors’ Chapter 11 Cases and (B) Directing that Certain Other Orders in the NRG Debtors’ Chapter 11 Cases Be Made Applicable to NRG McClain, entered by this Court on August 20, 2003 (the “McClain General Applicability Order”); and (ii) Order Pursuant to Section 105(a) of the Bankruptcy Code (A) Confirming the Applicability of LSP-Nelson Energy, LLC and NRG Nelson Turbines LLC of Certain Orders in the NRG Debtors’ Chapter 11 Cases and (B) Directing that Certain Other Orders in the NRG Debtors’ Chapter 11 Cases Be Made Applicable to LSP-Nelson Energy, LLC and NRG Nelson Turbines LLC, entered by this Court on October 6, 2003 (the “Nelson General Applicability Order”).

(b) Allowance and approval on a final basis of fees in the amount of \$6,994,870.00 and expenses in the amount of \$443,206.55, as requested in the First Interim Fee Application (as defined herein) and incurred from May 14, 2003 through and including August 31, 2003 (the “First Interim Compensation Period”);

(c) Allowance and approval on a final basis of fees in the amount of \$6,678,780.00 and expenses in the amount of \$1,109,145.59 incurred from September 1, 2003 through and including November 25, 2003 (the “Final Compensation Period”).

In support of this Application, K&E respectfully represents as follows:

### **JURISDICTION**

1. This Court has jurisdiction over this Application pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of the Debtors’ chapter 11 cases and this Application is proper under 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are sections 330 and 331 of the Bankruptcy Code, Rule 2016 of the Federal Rules of Bankruptcy Procedure, and the Local Guidelines. Pursuant to the Local Guidelines, a certification regarding compliance with the Local Guidelines is attached hereto as **Exhibit A**.

### **BACKGROUND**

2. On May 14, 2003 (the “Commencement Date”), NRG Energy, Inc. (“NRG”) and 25 of its affiliated entities filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Additionally, on June 5, 2003, NRG Nelson Turbines LLC and LSP-Nelson Energy, LLC (the “Nelson Debtors”), both of which are affiliates of NRG, filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code, which cases are currently pending before this court. Finally, on August 19, 2003, NRG McClain LLC (“McClain”), a wholly-owned subsidiary of NRG, filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case is being jointly administered with the cases filed on the Commencement Date.

3. Throughout these chapter 11 cases, the Debtors have operated their businesses and managed their properties as debtors in possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy

Code. The Nelson Debtors and McClain continue to operate their businesses and manage their properties as debtors in possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

4. No trustee or examiner has been appointed in these chapter 11 cases.

5. On May 21, 2003, the United States Trustee for the Southern District of New York appointed an official committee of unsecured creditors (the “Committee”) pursuant to section 1102 of the Bankruptcy Code.

6. On the Commencement Date, the NRG Plan Debtors filed a pre-negotiated joint chapter 11 plan of reorganization and related disclosure statement (as subsequently modified, the “NRG Plan” and the “NRG Disclosure Statement,” respectively).<sup>2</sup> On October 2, 2003, the Non-NRG Plan Debtors filed a separate plan of reorganization and related disclosure statement (the “Northeast/South Central Plan” and the “Northeast/South Central Disclosure Statement,” respectively).<sup>3</sup>

7. On July 22, 2003, NRG filed an application with the Federal Energy Regulatory Commission (“FERC”) requesting approval of the NRG Plan under section 203 of the Federal Power Act (the “FPA”). The FERC issued an order approving the FPA application on October 8, 2003. Additionally, on July 28, 2003, NRG and certain other applicants filed an application with the Securities and Exchange Commission (“SEC”) requesting approval of the NRG Plan under the applicable provisions of the Public Utility Holding Company Act (the “PUHCA”). The SEC approved the PUHCA application on October 10, 2003.

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<sup>2</sup> The NRG Plan Debtors are NRG, NRG Power Marketing Inc., NRG Finance Company I LLC, NRGenerating Holdings (No. 23) B.V., and NRG Capital LLC.

<sup>3</sup> The Non-NRG Plan Debtors are Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, Berrians I Gas Turbine Power LLC, Big Cajun II Unit 4 LLC, Connecticut Jet Power LLC, Devon Power LLC, Dunkirk Power LLC, Huntley Power LLC, Louisiana Generating LLC, Middletown Power LLC, Montville Power LLC, Northeast Generation Holding LLC, Norwalk Power LLC, NRG Central U.S. LLC, NRG Eastern LLC, NRG New Roads Holdings LLC, NRG Northeast Generating LLC, NRG South Central Generating LLC, Oswego Harbor Power LLC, Somerset Power LLC, and South Central Generation Holding LLC.

8. On November 24, 2003, this Court confirmed the NRG Plan by entering the Order (1) Confirming Reorganizing Debtors' Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code and (2) Authorizing NRG Plan Debtors and Non-NRG Plan Debtors to Enter into the Xcel Settlement Agreement and Approving the Third Party Releases in Connection Therewith (the "NRG Confirmation Order"). The NRG Plan became effective on December 5, 2003. On December 23, 2003, the NRG Plan Debtors began making distributions to all applicable creditor constituencies pursuant to the NRG Plan.

9. Additionally, on November 25, 2003, this Court confirmed the Northeast/South Central Plan by entering the Order Pursuant to Section 1129(a) of the Bankruptcy Code and Rule 3020 of the Federal Rules of Bankruptcy Procedure Confirming Debtors' First Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code (the "Northeast/South Central Confirmation Order"). The Northeast/South Central Plan became effective on December 23, 2003, the date on which the approximately \$2.7 billion refinancing transaction closed. Pursuant to the terms of the Northeast/South Central Plan and as a result of the refinancing, all bondholders of the Non-NRG Plan Debtors will be paid in full.

10. Neither the NRG Plan or the Northeast/South Central Plan affect the Nelson Debtors and McClain. The Nelson Debtors and McClain are negotiating with their respective creditor constituencies in an attempt to enter into a consensual plan of reorganization as expeditiously as possible. More specifically, the Nelson Debtors have been discussing various chapter 11 exit alternatives with a group of lenders, including a sale of the Nelson Debtors' assets. With respect to McClain, on October 28, 2003 the Court approved the sale of McClain's substantially all assets to Oklahoma Gas & Electric ("OG&E"), a unit of OGE Energy Corporation, for approximately \$160 million. A condition to closing of that sale is regulatory approval of the transaction by the FERC. On December 17, 2003, however, the FERC rejected OG&E's initial plan to acquire the McClain assets, set the case for a hearing before an administrative law judge, and asked for a ruling to be made within an

18-month period. Upon receipt of the appropriate regulatory approvals, McClain will file a liquidating chapter 11 plan. As evidenced by these events, the Nelson Debtors and McClain are using their best efforts to resolve all outstanding issues in order to emerge from bankruptcy.

11. Since their inception, these chapter 11 cases have been jointly administered by this Court. In light of the recent emergence from bankruptcy of the NRG Plan Debtors and the Non-NRG Plan Debtors, K&E expects that a procedural deconsolidation of the Nelson Debtors and McClain chapter 11 cases will occur shortly. To that end, K&E is hopeful that conclusion of the claims objection process under the NRG Plan will coincide with the resolution of the Nelson Debtors and McClain chapter 11 cases. In that event, either all chapter 11 cases will be appropriately closed, or there will be a procedural deconsolidation for any remaining bankruptcy cases. Importantly, and as more fully discussed herein, all fees and expenses payable to the United States Trustee or incurred by K&E in connection with the ongoing chapter 11 cases of the Nelson Debtors and McClain will be accounted for on a separate basis, will not be attributable to the NRG Plan Debtors or the Non-NRG Plan Debtors, and will be nominal in comparison to the United States Trustee fees paid during the Total Compensation Period on account of all jointly administered chapter 11 cases.

#### **K&E RETENTION**

12. The Court authorized K&E's retention as counsel for the Debtors in these chapter 11 cases effective *nunc pro tunc* as of May 14, 2003 in its Order Pursuant to 11 U.S.C. § 327(a) and 328(a) Authorizing the Employment and Retention of Kirkland & Ellis as Attorneys for the Debtors, which was entered by this Court on June 2, 2003 (the "Retention Order"). The Retention Order authorized K&E to be retained and employed by the Debtors pursuant to the procedures set forth in the Bankruptcy Code and any further orders entered by this Court. Additionally, with respect to the Nelson Debtors and McClain, K&E's retention was authorized by this Court in the McClain General Applicability Order and the Nelson General Applicability Order, as discussed above.

13. On October 8, 2003, K&E submitted to this Court and provided notice to all appropriate parties of the First Interim Fee Application of Kirkland & Ellis LLP as Attorneys for Debtors and Debtors in Possession for Allowance of Interim Compensation for Professional Services Rendered and for Reimbursement of Actual and Necessary Expenses Incurred from May 14, 2003 through August 31, 2003 (Docket Nos. 746-747) (the "First Interim Fee Application"). Due to its voluminous nature, K&E respectfully requests that the First Interim Fee Application be incorporated herein by reference. In the First Interim Fee Application, K&E sought this Court's approval for the professional services rendered to the Debtors in the aggregate amount of \$6,994,870.00 and reimbursement of all actual and necessary expenses incurred in connection with such services in the aggregate amount of \$443,206.55. No order has been entered and no objections have been filed to date in connection with the First Interim Fee Application.

14. K&E has confirmed that, to date, the Debtors have paid all of the required quarterly fees to the office of the United States Trustee.

#### **COMPENSATION REQUESTED**

15. This Application has been prepared in accordance with the Guidelines.

16. Pursuant to both the NRG Confirmation Order and the Northeast/South Central Confirmation Order, the Debtors are not required to submit any applications for professional services rendered or expenses incurred after the respective confirmation dates for the NRG Plan and the Northeast/South Central Plan. With the exception of K&E's fee statements and applications required to be submitted in connection with the bankruptcy cases of the Nelson Debtors and McClain, as further discussed above, November 25, 2003 is the date on which the Total Compensation Period ends.

17. During the Total Compensation Period, K&E attorneys and paraprofessionals expended a total of 37,583 hours for which compensation is requested. Specifically, K&E seeks allowance of compensation for professional services rendered to the Debtors during the Total



Compensation Period in the aggregate amount of \$13,673,650.00, and for reimbursement of expenses incurred in connection with the rendition of such services in the aggregate amount of \$1,552,352.14.

18. Pursuant to the Administrative Order, K&E has been submitting monthly fee statements to the Debtors seeking interim compensation and reimbursement of expenses. During the Total Compensation Period, K&E has submitted six monthly statements as follows: (i) one for approximately one half of the month of May and the month of June; (ii) one each for the months of July, August, September, and October; and (iii) one for approximately three weeks of the month of November.

19. During the Total Compensation Period, K&E has received, pursuant to the Administrative Order, a total of \$10,938,920.00 for legal services provided to and on behalf of the Debtors and \$1,569,811.24 for out-of-pocket expenses incurred in connection therewith.<sup>4</sup> In accordance with the Administrative Order, such payments represent approximately eighty percent (80%) of K&E's fees and one hundred percent (100%) of K&E's out-of-pocket expenses incurred during the Total Compensation Period. As of the filing of this Application, K&E has not received payment in the amounts of \$666,640.90 for the May 2003-June 2003 period, \$400,497.80 for July 2003, \$331,835.30 for August 2003, \$352,005.00 for September 2003, \$453,616.60 for October 2003, and \$530,134.40 for the applicable November 2003 period. These amounts, which aggregate \$2,734,730.00, reflect the 20% holdback of fees in accordance with the Administrative Order. Therefore, after the appropriate net adjustment of \$17,459.10, K&E seeks payment of \$2,717,270.90 pursuant to this Application, which

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<sup>4</sup> Pursuant to the Administrative Order, K&E prepared and submitted a single fee statement for the period beginning May 14, 2003 and ending June 30, 2003. Monthly fee statements for July 2003, August 2003, September 2003, October 2003, and the relevant November 2003 compensation period were submitted separately. Additionally, due to the timing differences between internal expense submissions and their subsequent posting in the K&E billing system, K&E has reduced its total expenses by \$17,459.10 for the applicable period in November 2003 so as to correctly reflect the net amount of expenses incurred during the Total Compensation Period. Accordingly, while K&E has already received the amount of \$1,569,811.24 on account of its out-of-pocket expenses incurred during the Total Compensation Period, the total net amount of expenses for which K&E seeks this Court's approval in the Application is \$1,552,352.14, which reflects the \$17,459.10 credit difference.

amount represents the net portion of K&E's fees for legal services and expenses rendered during the Total Compensation Period and not already paid to K&E pursuant to the Administrative Order.

20. Overall, K&E seeks approval of the aggregate amount of \$13,673,650.00 for legal services rendered on behalf of the Debtors during the Total Compensation Period, and \$1,552,352.14 for reimbursement of expenses incurred in connection with the rendition of such services, for a total award of \$15,226,002.14 (the "Total Compensation Amount"). The Total Compensation Amount is comprised of \$6,994,870.00 in legal fees and \$443,206.55 in expense reimbursement incurred during the First Interim Compensation Period and sought pursuant to the First Interim Fee Application, and \$6,678,780.00 in legal fees and \$1,109,145.59 in expense reimbursement incurred during the Final Compensation Period. Furthermore, the Total Compensation Amount, while calculated herein with specificity, does not include additional compensation for professional services performed and expenses incurred, if any, that K&E may seek without prejudice pursuant to paragraph 30 of the Application.

21. The fees sought by the Application reflect an aggregate of 37,583 hours of attorney and paraprofessional time spent and recorded in performing services for the Debtors and their estates during the Total Compensation Period, at a blended average hourly rate of \$363.83 for both professionals and paraprofessionals. The blended hourly rate for professionals only is \$413.07.

22. K&E rendered to the Debtors and their estates all services for which compensation is sought solely in connection with these chapter 11 cases.

23. K&E maintains computerized records of the time expended in the rendition of the professional services required by the Debtors and their estates. These records are maintained in the ordinary course of K&E's practice. For the convenience of the Court and all parties in interest, attached hereto as Exhibit B is a billing summary for the Total Compensation Period, setting forth the name of each attorney and paraprofessional for whose work on these chapter 11 cases compensation is sought, each attorney's year of bar admission, the aggregate of the time expended by each attorney and each paraprofessional, the hourly billing rate for each attorney and each paraprofessional at K&E's current

billing rates, and an indication of the individual amounts requested as part of the total amount of compensation requested. Also set forth in the billing summary is information indicating whether each attorney is a partner or associate, how many years each attorney has held this position, and each attorney's area of practice concentration. The compensation requested by K&E is based on the customary compensation charged by comparably skilled practitioners in cases other than cases under the Bankruptcy Code.

24. K&E also maintains computerized records of all expenses incurred in connection with the performance of professional services. A summary of the amounts and categories of expenses for which reimbursement is sought, as well as a breakdown of expenses by project category and their detailed description, are attached hereto as **Exhibit C** and are similarly provided in **Exhibit C** of the First Interim Fee Application.

25. There is no agreement or understanding between K&E and any other person, other than members of the firm, for the sharing of compensation to be received for services rendered in these cases.

#### **TIME AND EXPENSE RECORDS**

26. As required by the Local Guidelines, a certification regarding compliance with same is attached hereto as **Exhibit A**.

27. Annexed hereto as **Exhibit B** is a detailed schedule enumerating all of the K&E professionals and paraprofessionals who have performed services in these chapter 11 cases during the Total Compensation Period, the capacities in which each such individual is employed by K&E, the department in which each such individual practices, the hourly billing rate charged by K&E for services performed by each such individual, the aggregate number of hours expended in this matter and fees billed therefor, and the year in which each professional was first licensed to practice law, if applicable.

28. Annexed hereto as **Exhibit C** is a schedule applicable to the Final Compensation Period that summarizes the categories of expenses for which K&E is seeking reimbursement and the

total amount for each such expense category. A similarly prepared expense summary was also attached as **Exhibit C** to the First Interim Fee Application.

29. Annexed hereto as **Exhibit D** is a detailed summary of K&E's time records billed during the Final Compensation Period, including detail reflecting time and expenses recorded under various K&E internal matter numbers and work codes. Additionally, **Exhibit D** of the First Interim Fee Application contains the same level of detail with respect to the First Interim Compensation Period.

30. To the extent that time or disbursement charges for services rendered or disbursements incurred relate to the Total Compensation Period, but were not processed prior to the preparation of this Application, K&E reserves the right to request additional compensation for such services and reimbursement of such expenses in a supplemental fee application (the "Application Supplement"). K&E proposes that, to the extent necessary and subsequent to the hearing on this Application, it will provide the Court and all applicable parties in interest with the Application Supplement, including the applicable time records and disbursement details, prepared in the format specified by the Guidelines. If, within 15 days of the service of the Application Supplement, no such party objects to the Application Supplement, K&E shall be entitled to receive full payment requested in the Application Supplement from the Debtors' estates without further leave or notice of the Court.

**SUMMARY OF PROFESSIONAL SERVICES RENDERED**

31. To provide an orderly and meaningful summary of the services rendered on behalf of the Debtors and their estates by K&E, K&E has established, in accordance with the Guidelines and its internal billing procedures, the following separate project billing categories in connection with these chapter 11 cases:<sup>5</sup>

4	Dynergy Potential Claims Investigation
5	FirstEnergy Arbitration

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<sup>5</sup> To the extent necessary and to streamline the reporting of various related legal tasks performed by K&E's attorneys and paraprofessionals during the Total Compensation Period, certain matter numbers or project categories have been combined.

6	GE Dispute
7	CFTC Investigation
8	National Grid WSOS Dispute
9/23/39	Bankruptcy Filing/First Day Pleadings/Filing of Petition for Chapter 11
10	Adversary Proceedings & Contested Matters
11/31	Automatic Stay Matters/Relief from Stay
12	Avoidance Actions
13	Case Administration
14	Cash Management
15	Claims Estimate, Objection & Resolution
16	Corporate & Securities Matters
17	Creditors/Shareholder's Inquiries
18/28/32	Disclosure/Plan/Confirmation/Reorganization
19	Employee Issues
20	Employment Advice
21/26	Executory Contracts/Leases (Assumption & Rejection)
22	File, Docket, Calendar Maintenance
24	Hearings
25	K&E Fee Applications & Monthly Statements
27	Other Fee Applications
29	Preferences
30	Reclamation
33	Schedules/SoFA
34	Tax Issues
35	Travel
36	Use/Sale/Lease of Property/Abandonment
37	Utilities
38	DIP Financing/Cash Collateral
40	Vendor Issues
41	Commercial Transaction Advice
42	Enfield Energy Advice
43	Professionals Retention
44	Refinancing
45	Project B
46	McClain Sale
47	FERC Regulatory Advice

32. During the Total Compensation Period, K&E provided significant professional services to the Debtors in connection with these chapter 11 cases. These services were often performed under severe time constraints and were necessary to administer a multitude of critical issues typically faced by large corporate debtors in a chapter 11 case of this magnitude and complexity.

33. The following is a summary of the most significant professional services rendered by K&E during the Total Compensation Period. This summary is organized in accordance with K&E's internal system of matter numbers. Additionally, **Exhibit D** of this Application, as well as **Exhibit D** of the First Interim Fee Application, both contain a more detailed description of the services rendered by

K&E during the Total Compensation Period. Such detailed description shows that K&E was heavily involved in the performance of services for the Debtors on a daily basis, including night and weekend work, often under extreme time pressure in order to meet the needs of the Debtors and their estates in these chapter 11 cases.

a. FIRSTENERGY ARBITRATION (Matter 5)

- Prepared for, commenced and conducted arbitration proceedings with FirstEnergy Corporation over potential damage claims in the aggregate amount of approximately \$700 million arising out of an allegedly failed \$1.5 billion power plant sale in 2002; negotiated a comprehensive settlement of the claims arising in connection with these arbitration proceedings.
- Conducted legal research, analyzed substantial sets of relevant data, selected and retained arbitrator parties, conducted extensive discovery, and attended multiple meetings and hearings held in connection with the arbitration.
- Gathered relevant data, performed necessary database set up and analysis, conducted witness interviews, evaluated various arbitration approaches in the context of pending bankruptcy proceedings, and conducted extensive settlement negotiations with multiple parties.

b. CFTC INVESTIGATION (Matter 7)

- Collected, reviewed and analyzed various commodities trading data and other relevant information in response to a subpoena issued by the Commodity Futures Trading Commission.
- Prepared for and defended client depositions, addressed various discovery requests, prepared document productions, participated in related office conferences, and conducted legal research.
- Negotiated and corresponded with the Commodity Futures Trading Commission.

c. BANKRUPTCY FILING/FIRST DAY PLEADINGS/FILING OF PETITION FOR CHAPTER 11 (Matters 9, 23 & 39)

- Consistent with the postpetition bankruptcy case procedures, prepared and revised court documents, reviewed all necessary data, and commenced the Debtors' chapter 11 cases on the Commencement Date; on a postpetition basis, coordinated bankruptcy court filings and held office conferences to address and resolve various scheduling deadlines imposed by the Debtors' chapter 11 filing.
- Prepared and revised multiple sets of court pleadings utilized by the Debtors in requesting and obtaining first day relief under the Bankruptcy Code, including relief sought by McClain and the Nelson Debtors; performed related legal research.

- Coordinated internal and external document generation efforts and attended to all other issues related to first day relief, including hearing appearances and administrative tasks, that have not otherwise been listed under a different matter category.

d. ADVERSARY PROCEEDINGS & CONTESTED MATTERS (Matter 10)

- *Motion to Transfer Venue by Shaw and Stone & Webster; Involuntary Chapter 11 Case Commenced by Shaw and Stone & Webster; Multiple Objections of Shaw and Stone & Webster to the NRG Plan and the NRG Disclosure Statement*—Shortly after the Commencement Date, Shaw Constructors, Inc. (“Shaw”) and Stone & Webster, Inc. (“S&W”) moved to transfer venue of the reorganization cases to the United States Bankruptcy Court for the Southern District of Mississippi, where both had previously commenced an involuntary bankruptcy case against LSP-Pike Energy, LLC (“Pike”), one of NRG’s power plant projects. Shaw and S&W asserted claims against NRG in the amount exceeding \$130 million in connection with the Pike project and attempted to delay the chapter 11 cases on numerous occasions. As a result of the numerous efforts of Shaw and S&W to delay the chapter 11 cases, K&E (a) was involved in an intensive litigation on behalf of the Debtors, in which connection it performed extensive legal research, attended conferences and took direct lead in all relevant hearings and proceedings; (b) participated in extensive settlement negotiations with Shaw and S&W and responded to various objections to the proposed settlement; (c) prepared for and attended settlement hearing in the Southern District of Mississippi; and (d) sought and received approval from this Court of the Shaw/S&W settlement.
- *Objection to Claims of the Northeast/South Central Bondholders and Other Parties in Interest for Makewhole Premiums; Motion of the Northeast/South Central Creditors to Terminate Exclusivity Period and to Appoint Trustee; Related Motions and Objections of the Indenture Trustee and DE Shaw/Longacre*—During the last stages of these chapter 11 cases, the Northeast/South Central bondholders and other parties in interest sought to validate and enforce the “makewhole” premium provisions under the related proofs of claim in excess of \$400 million. In response to these aggressive and persistent efforts, K&E was required to defend the interests of the Debtors’ estates and, in so doing, (a) responded to production requests on an extremely short notice by producing over 80 boxes of documents over a 10-day period; (b) again, on an extremely short notice, prepared detailed trial testimony, witness lists, deposition designations for multiple witnesses; (c) attended numerous hearings and office conferences; (d) prepared and filed appropriate objection/reply pleadings and conducted related legal research; (e) conducted extensive negotiations with all parties involved; and, finally, (f) defended at least 4 highly contested client depositions and participated in approximately 10 witness depositions overall.
- *Motion to Reject an Executory Contract with CL&P & Multiple Related Appellate Proceedings; Numerous Objections to the NRG Plan and the NRG Disclosure Statement*—Shortly after the Commencement Date, Connecticut Light & Power Company (“CL&P”) became involved in a highly contested and protracted executory contract rejection dispute with NRG and NRG Power Marketing Inc. (“PMI”) at various regulatory and jurisdictional levels, including this Court. In response to

CL&P's multiple efforts to aggressively challenge the applicable Debtors' right to reject the disputed executory contract, K&E, in defending the interests of the Debtors' estates, (a) appeared in several highly contested hearings; (b) participated in extensive settlement negotiations with CL&P throughout the entire process; (c) sought and received approval from this Court of the subsequent settlement with CL&P; (d) conducted extensive legal research in preparation for the hearings; (e) held numerous internal and external office conferences; (f) drafted multiple court documents to address numerous issues in connection with an executory contract rejection procedure under the Bankruptcy Code in the context of various regulatory constraints imposed on the NRG Plan Debtors by the FERC, Connecticut's attorney general and various other intervening regulatory bodies.

- *Objections of Dick Corporation to the NRG Plan and the NRG Disclosure Statement; Motion to Lift Stay by Dick Corporation*—In response to several contested attempts of Dick Corporation to resolve its outstanding claims against NRG in the approximate amount of \$60 million in connection with the Meriden project, K&E, on behalf of NRG, (a) prepared for and participated in extensive settlement negotiations with Dick Corporation and related parties; and (b) sought and received approval from this Court of the subsequent settlement with Dick Corporation.
- *Motion to Lift Stay by Fortistar & Related Appellate Litigation; Various Objections of Fortistar to the NRG Plan and the NRG Disclosure Statement*—In response to these and other attempts to impede the Debtors' reorganization process, K&E (a) prepared for and responded to several actions commenced by Fortistar and certain of its affiliates to resolve their outstanding claims in the alleged amount of approximately \$450 million held against NRG; (b) participated in extensive settlement negotiations with Fortistar and related parties; and (c) sought and received approval from this Court of the subsequent settlement with Fortistar.
- Responded to and resolved various setoff dispute issues raised by several parties, including but not limited to Edison Mission, Sunflower Electric, Citicorp, Bank of America, and General Electric.

e. AUTOMATIC STAY MATTERS/RELIEF FROM STAY (Matters 11 & 31)

- Undertook detailed review and responded to numerous demands from multiple parties—including but not limited to FirstEnergy Corporation, Fortistar Capital, Entergy Corporation, Ace Insurance, ANZ, CL&P, Dick Corporation, PCL Industrial, Edison Mission, and Niagara Mohawk Power Corporation—to lift or otherwise modify the automatic stay against the Debtors' estates.
- Prepared court pleadings in opposition to various lift stay motions, analyzed and executed upon appropriate stipulation alternatives, reviewed hearing transcripts, and responded to efforts by creditors to take actions that would potentially violate the automatic stay.

f. AVOIDANCE ACTIONS (Matter 12)

- Conducted extensive analysis of all potential avoidance and preferential transfer actions to be commenced and prosecuted, where appropriate, by the Debtors' estates



against numerous potential defendants; perform related legal research; analyze collateral recovery issues.

g. CASE ADMINISTRATION (Matter 13)

- Maintained files and monitored case dockets to remain current on the status of the proceedings and keep the Debtors, as well as certain necessary professionals and creditors, apprised of all significant developments in these chapter 11 cases.
- Prepared for and attended organizational and administrative meetings with the office of the United States Trustee, as well as with numerous representatives of the Committee and other creditor parties in these chapter 11 cases.
- Coordinated with the staff of this Court to manage ongoing issues in connection with docket scheduling, electronic filing of court documents, and upcoming hearing agenda.
- Prepared for and conducted multiple status conferences with various representatives of the Debtors and internal K&E working groups to address and resolve issues dealing with numerous scheduling matters, noticing procedures, press releases, court filings, and the overall restructuring process.
- Conducted extensive review of a number of administrative, jurisdictional and operational needs of the Debtors and their estates, particularly in the areas of global property insurance, surety bond release, balloting, preparation of the monthly operating reports, revenue and tax, environmental compliance, and all other administrative matters not captured elsewhere under a separate matter number that commonly arise in a bankruptcy proceeding of this magnitude and complexity.

h. CASH MANAGEMENT (Matter 14)

- Rendered legal advice and assisted the Debtors with maintaining existing bank accounts, continuing the use of their existing cash management systems, continuing the use of their existing investment policies, resolving various cash collateral issues, implementing a new insurance bonding program, and addressing inventory financing proposals.
- Participated in office conferences with the office of the United States Trustee to address outstanding bank account and cash management issues.

i. CLAIMS ESTIMATE, OBJECTION & RESOLUTION (Matter 15)

- Worked closely with the Debtors' financial advisors and the claims agent to resolve outstanding claims issues; reviewed multiple proofs of claim, conducted related due diligence; ensured withdrawal of certain claims filed against the Debtors' estates and enforced the procedures set forth pursuant to various bar dates established in these chapter 11 cases.

- Identified, evaluated and estimated potential claims against the Debtors' estates, with a primary focus on the claims of NRG Finance Company I LLC; analyzed relevant lending agreements and subsequent proofs of claim.

j. CORPORATE & SECURITIES MATTERS (Matter 16)

- Advised the Debtors on all matters relating to general corporate and securities issues, including compliance with the reporting requirements of and information requests from the Securities and Exchange Commission, compliance with corporate governance procedures, disclosure policies, NASDAQ listing, various financing and default-related issues, guarantee obligations, fiduciary duties of officers and directors, organizational corporate structure matters in the context of parent company and project-level corporate levels, contemplated plan effectiveness and post-effectiveness issues in anticipation of the applicable Debtors' emergence from bankruptcy, and took all of the necessary steps to ensure the consummation of the \$2.7 billion refinancing transaction following this Court's confirmation of the NRG Plan and the Northeast/South Central Plan.
- Undertook extensive review and analysis of various corporate documents, including indenture agreements, trust agreements, credit documents, charters and bylaws, registration rights agreements, and other financing and corporate organizational materials to assist the Debtors with numerous regulatory and corporate asset management issues.

k. CREDITORS/SHAREHOLDER'S INQUIRIES (Matter 17)

- Responded to and followed up on numerous telephone and correspondence requests for information from various existing creditor and potential creditor constituencies, including the Committee, distressed asset investors, former and existing customers, certain vendors, and regulatory entities.
- Prepared for and participated in the section 341 meeting held among the Debtors' representatives and various creditors.

l. DISCLOSURE/PLAN/CONFIRMATION/REORGANIZATION (Matters 18, 28 & 32)

- Participated in a series of extensive negotiations with multiple parties regarding the structure, terms and provisions of the NRG Plan and the Northeast/South Central Plan; addressed all related restructuring, document preparation and legal research tasks relating thereto.
- Organized and participated in numerous office and telephone conferences with multiple creditor constituencies to address and resolve issues and objections dealing with the adequacy of disclosure, solicitation procedures, distribution process and timing, balloting and voting, confirmation, and regulatory prerequisites to procure confirmation of the NRG Plan and of the Northeast/South Central Plan and, in so doing, consummate the restructuring process in an efficient and timely fashion.
- Performed all necessary legal and corporate research to aid the Debtors in the drafting of several amended disclosure statements and plans of reorganization; prepared

multiple confirmation pleadings and supporting documents to ensure successful confirmation of the NRG Plan and the Northeast/South Central Plan.

- Prepared and filed the PUHCA application with the SEC requesting regulatory approval of the NRG Plan and all related transactions thereunder; obtained the approval of the NRG Plan from the SEC. In addition, prepared and filed the section 203 FPA application with the FERC requesting regulatory approval of the NRG Plan and all related transactions thereunder; obtained the approval of the NRG Plan from the FERC.

m. EMPLOYEE ISSUES (Matter 19)

- Rendered legal advice, negotiated various agreements and provided related services to the Debtors related to several employee-related matters, including a comprehensive employee benefits analysis, detailed review of the Debtors' employment agreements, 401(k) audit reports, employee confidentiality issues, assessment of various pension and wage claims arising prior to the Commencement Date, implementation of a long-term incentive compensation plan, and retention of the Debtors' chief executive officer and other senior corporate management.

n. EXECUTORY CONTRACTS/LEASES (ASSUMPTION & REJECTION) (Matters 21 & 26)

- Conducted extensive review of hundreds of executory contracts of the Debtors to evaluate rejection or assumption alternatives in connection therewith; made numerous court filings and appearances to implement such alternatives, with a primary focus on the Debtors' agreements with CL&P, Triton Coal Company, NEPOOL, Natural Gas Pipeline Company of America, Niagara Mohawk Power Corporation, Courtney Foos Coal Company, Edison Mission, S&W, Fortistar, Con Edison, Oracle, General Electric, XL Capital, and several other counterparties.
- In response to objections from numerous counterparties, engaged in extensive legal research and participated in numerous office and telephone conferences to address all rejection, assumption, stipulation or cure objection issues with respect to the Debtors' executory contracts.
- Reviewed and analyzed numerous leasing agreements involving primarily the Debtors' leases of nonresidential real property for purposes of assumption or rejection under section 365 of the Bankruptcy Code; conducted analysis of eviction procedures in various local jurisdictions.
- Prepared, filed and served all of the necessary rejection and assumption motions, affidavits and related memoranda of law in connection with the Debtors' lease assumption or rejection.

o. FILE, DOCKET, CALENDAR MAINTENANCE (MATTER 22)

- Monitored court docket, prepared and distributed postpetition filing deadline memoranda, maintained case files, downloaded and circulated various docket entries, and examined various pleadings submitted to this Court. With certain minor exceptions such as creating and analyzing critical date timelines, all services

performed under this matter number were almost exclusively rendered by K&E's paraprofessionals.

p. HEARINGS (Matter 24)

- Prepared for and attended numerous court hearings held before this Court and various other courts in several jurisdictions across the country as primary legal counsel to the Debtors and their estates. Drafted, revised, filed and served numerous court pleadings and related documents in connection with all of the hearings attended during the Total Compensation Period.

q. K&E FEE APPLICATIONS & MONTHLY STATEMENTS (Matter 25)

- Prepared and served K&E's six monthly fee statements, the First Interim Fee Application and this Application pursuant to the procedures and standards set forth in the Administrative Order, the Bankruptcy Code, the Bankruptcy Rules, the Guidelines, and all applicable orders of this Court.
- In light of the magnitude and complexity of these chapter 11 cases, a core restructuring team comprised of approximately 12 K&E bankruptcy attorneys rendered professional services to the Debtors and their estates. In addition to K&E bankruptcy attorneys, certain other professionals from various K&E practice groups have, to the extent necessary, assisted the Debtors and their estates in numerous specialized areas such as corporate finance, regulatory compliance and energy-related advice. The extent of such services is more fully described below. Moreover, at various times during the Total Compensation Period, K&E utilized the services of approximately 70 paraprofessionals to perform the majority of administrative tasks in these chapter 11 cases so as to minimize the overall cost of legal services to the Debtors' estates. Accordingly, K&E's preparation and submission of the six monthly fee statements, the First Interim Fee Application and the Application necessitated a considerable amount of time and effort.

r. SCHEDULES/STATEMENT OF FINANCIAL AFFAIRS (Matter 33)

- Reviewed numerous documents, conducted due diligence and analyzed all of the relevant data in preparation of the Debtors' schedules and statements of financial affairs.
- Coordinated with the Debtors' financial advisors and the claims agent to resolve any outstanding document preparation issues; coordinated applicable court filings.

s. TAX ISSUES (Matter 34)

- Evaluated multiple tax consequences of transactions contemplated by the Debtors or proposed by third parties, including research and analysis in the areas of cancellation of debt income, treatment of property tax obligations under the Bankruptcy Code, intercompany tax sharing, tax refunds, tax disclosure, and other Internal Revenue Code requirements.

- Provided input on specific tax issues, including the provisions of the Xcel tax sharing agreement and various post-emergence tax consequences, in connection with the drafting, amending and confirming the NRG Plan and the Northeast/South Central Plan.

t. TRAVEL (Matter 35)

- This matter category includes K&E time spent for non-working travel as part of K&E's legal representation of the Debtors and their estates. In most instances, K&E customarily invoiced the Debtors for one half of the total time that K&E professionals and paraprofessionals devoted to non-working travel. Accordingly, approximately 721 hours of travel time—resulting in approximately \$262,000 in travel-related fees calculated at the combined blended average hourly rate of approximately \$364—have not been billed. Given that, on average, K&E's professionals (whose blended average hourly rate is approximately \$413) have traveled significantly more often than paraprofessionals, the savings realized by the Debtors and their estates as a result of K&E's voluntary travel rate reduction are likely to be higher than the above-stated conservative estimate of \$262,000, and may well approach or even surpass \$300,000.

u. USE/SALE/LEASE OF PROPERTY/ABANDONMENT (Matter 36)

- Evaluated and rendered advice on various alternatives and rights accorded the Debtors under sections 363 and 554 of the Bankruptcy Code in order to preserve and maximize the property of the Debtors' estates, including detailed examination of lien, title and survey materials, extensive review of pending or concluded asset sales pertaining to certain domestic or foreign subsidiary businesses, and preparation of due diligence materials or asset disposition documentation.

v. UTILITIES (Matter 37)

- Addressed and resolved numerous issues arising out of the Debtors' relationship with several utility providers in the context of section 366 of the Bankruptcy Code, including demands for adequate assurance and ensuing objections from Niagara Mohawk Power Corporation, Con Edison, Massachusetts Electric Company and NIPSCO, potential impact of defaults under certain power supply agreements, review of utility invoices and deposits, settlement of various utility objections and claims, and other related issues stemming from the nature of the Debtors' business as a global power production and marketing enterprise.

w. DIP FINANCING/CASH COLLATERAL (Matter 38)

- Conducted extensive negotiations with the representatives of GE Capital Corporation and other interested parties, including the representatives of certain creditors of NRG Northeast Generating LLC and NRG South Central Generating LLC, in order to secure a DIP credit facility and obtained approval from this Court regarding its use.
- Advised the Debtors on various issues surrounding their use of cash collateral during the pendency of these chapter 11 cases and performed extensive legal research on the matter.

- Obtained, reviewed, analyzed, filed, revised and drafted multiple financing documents and pleadings necessary for the procurement of the DIP facility and cash collateral negotiations with the DIP lender and various objecting creditor constituencies.

x. COMMERCIAL TRANSACTION ADVICE (Matter 41)

- Considered, analyzed and resolved a variety of commercial issues and disputes relating to power supply agreements, commodity transportation matters, asset dispositions, equipment leasing, railcar leases, and various other operating agreements that have not been captured elsewhere under a separate matter number, with a particular focus on transactions or disputes involving American Commercial Terminals, Burlington Northern Santa Fe Railway, Canadian Imperial Bank of Commerce, Triton Coal Company, American Commercial Barge Lines, CSX Transportation, Con Edison, Trinity, Entergy, ISO-New England, NEPOOL, JAIX, and Keyspan.

y. REFINANCING (Matter 44)

- Conducted extensive negotiations and discussed loan commitment/financing terms with several potential lenders and their representatives in order to secure a comprehensive debt recapitalization package for NRG and certain of its affiliates.
- Assisted NRG with the preparation of the entire recapitalization documentation package, including commitment letter, fee letter, engagement letter and other related financing documents necessary to accomplish a multibillion recapitalization transaction for the benefit of the Debtors and their estates.
- Attended numerous office conferences, prepared offering memoranda and credit agreements, performed related due diligence, directed multiple presentations to various interested parties, and prepared and filed with this Court a number of pleadings required for the approval of the commitment letter in connection with the recapitalization transactions proposed by the Debtors pursuant to sections 105 and 363 of the Bankruptcy Code.
- As this Court is well aware, the approximately \$2.7 billion refinancing transaction, the groundwork for which was laid during the Final Compensation Period, was successfully consummated on December 23, 2003. More specifically, the refinancing involved (a) issuance of senior secured term loan B notes in the amount of \$1.2 billion; (b) issuance of second priority lien notes in the amount of \$1.25 billion; and (c) establishment of the senior secured revolving credit facility in the amount of \$250 million. The proceeds raised in the refinancing are to be used to repay the approximately \$1.7 billion of existing debt pursuant to the Northeast/South Central Plan, to provide NRG with approximately \$500 million in working capital, and to monetize approximately \$500 million of the newly issued corporate notes to various creditors under the NRG Plan.

z. MCCLAIN SALE (Matter 46)

- Prepared pleadings and related documents for the hearing on the sale of substantially all assets of McClain to OG&E for approximately \$160 million; reviewed potential

purchasers' bids for the assets to be sold; analyzed potential regulatory issues in connection with the sale; followed up on the outstanding transaction closing issues.

**REASONABLE AND NECESSARY SERVICES RENDERED BY K&E**

34. These chapter 11 cases, involving approximately \$12 billion in debt, were highly complex and hotly contested. With approximately \$10 billion in assets at the time of bankruptcy filing, NRG was the second largest public company to commence a reorganization case in 2003, and remains among the top 25 largest public company bankruptcies ever filed in the United States as measured by assets.

35. Additionally, NRG's corporate status as a subsidiary of Xcel Energy Inc. added to the complexity of corporate matters addressed and resolved in order to effectuate the terms of the NRG Plan and the Northeast/South Central Plan, including an expedited restructuring schedule against which many critical deadlines in these chapter 11 cases have been measured.

36. Finally, the unique and arguably precedent-setting nature of certain regulatory issues faced by the Debtors as they have attempted to restructure in an expeditious manner, particularly as these issues may affect the broader energy markets in the United States, has required a substantial investment of time, effort, resources, and deliberation on the part of K&E as the Debtors' primary reorganization counsel.

37. The need for the expedited regulatory approval of the NRG Plan and related transactions from the SEC and the FERC made these chapter 11 cases particularly unusual. As discussed more fully above, the Debtors sought and received all applicable regulatory approvals from the SEC and the FERC in less than four months. This is an unprecedented result in light of the size and complexity of these chapter 11 cases.

38. Indeed, as an indication of these chapter 11 cases' unusual speed, remarkable complexity and highly contested framework, the highest overall charges incurred by the Debtors' estates during the Total Compensation Period belong, in the following descending order, to the following K&E

matters: (1) “Adversary Proceedings & Contested Matters” (\$3,185,791.14 in fees and expenses); (2) “Disclosure/Plan/Confirmation/Reorganization” (\$1,937,583.30 in fees and expenses); (3) “FirstEnergy Arbitration” (\$1,593,279.19 in fees and expenses); (4) “Corporate & Securities Matters” (\$1,586,799.81 in fees and expenses); and, finally, (5) “Refinancing” (\$1,243,812.57 in fees and expenses). Collectively, these top five matter categories represent approximately 63% of the entire Total Compensation Amount and, as such, provide a useful context for K&E’s compensation request in connection with these chapter 11 cases.

39. Accordingly, the foregoing professional services rendered by K&E on behalf of the Debtors and their estates during the Total Compensation Period (as described in greater detail in Exhibit D attached hereto and Exhibit D of the First Interim Fee Application) were reasonable, necessary and appropriate to the administration of the Debtors’ chapter 11 cases and related matters. The professional services performed by K&E were in the best interests of the Debtors and their estates, the Committee and other creditor constituencies, and other parties in interest. Compensation for the foregoing services as requested is, therefore, commensurate with the complexity, importance, magnitude, deadlines and nature of the problems, issues or tasks involved. Additionally, the professional services for which compensation is sought herein were performed expeditiously and in an efficient manner.

40. The great majority of the services performed by partners and associates of K&E were rendered by K&E’s Restructuring, Insolvency, Workout & Bankruptcy Group. K&E has a preeminent practice in this area and enjoys a national and international reputation for its expertise in financial reorganizations and restructurings of troubled companies, with approximately 80 attorneys specializing in this area of law. The attorneys at K&E have represented either the debtor or the creditors’ committee, or have acted as special counsel, in such chapter 11 cases as Consec, United Airlines, Allegiance Telecom, AT&T Latin America, Williams Communications, Combustion Engineering, Fleming Companies, Trans World Airlines, Exide Technologies, Polymer Group, Iridium,



Telegroup, Chiquita Brands, Dade Behring, United Artists Theatre Company, Babcock & Wilcox, W.R. Grace, USG Corporation, Quality Stores, Armstrong World Industries, AmeriServe Food Distributors, Harnischfeger Industries, Gaylord Container, Teligent, Maruko, Carolco Pictures, Store of Knowledge, Zenith Electronics Corporation, and Dow Corning Corporation. As a consequence, K&E has brought to these chapter 11 cases a particularly high level of expertise, which inured to the benefit of the Debtors, their estates, and all parties in interest.

41. The complexity of these chapter 11 cases and NRG's business have often required professional expertise beyond the traditional bankruptcy practice area. Thus, a core K&E restructuring team, which is comprised of approximately 12 attorneys from K&E's Restructuring, Insolvency, Workout & Bankruptcy Group, has engaged K&E attorneys from other practice areas so as to efficiently address multiple regulatory concerns, render specialized energy-related advice, negotiate the terms of a complex refinancing transaction in the approximate amount of \$2.7 billion, and assist with a multitude of other corporate finance and litigation matters on behalf of the Debtors and their estates.

42. During the Total Compensation Period, approximately 15 K&E litigation attorneys have defended the interests of the Debtors and their estates in numerous proceedings in a number of jurisdictions across the country. Overall, K&E's litigation attorneys, which number more than 350, have extensive bankruptcy litigation experience as well as expertise in complex commercial litigation outside of bankruptcy. Representative clients include many of America's largest corporations, including Abbott Labs, 3M, Brown & Williamson, General Motors Corporation, Coca-Cola Enterprises, Chiquita Brands, Motorola, Dow Corning Corporation, Morgan Stanley, Lucent Technologies, and Honeywell International.

43. Additionally, the Debtors and their estates have benefited from the specialized legal advice rendered during the Total Compensation Period by approximately six specialists from K&E's Energy Practice Group on matters ranging from regulatory compliance under the PUHCA to day-to-day commercial issues in the ordinary course of the Debtors' power generation business. On a

firmwide basis, K&E's Energy Practice Group, which consists of approximately 15 attorneys, provides regulatory services to clients who are seeking to comply with or influence the fast-changing regulation and deregulation of the energy industry and litigates complex regulatory issues before federal and state agencies. In addition, K&E's energy lawyers are routinely called upon to provide counseling to clients on sophisticated corporate transactions in matters ranging from mergers and acquisitions to energy supply and sales contracts.

44. Furthermore, due to the Debtors' complex corporate and capital structures, K&E's core bankruptcy team has often relied on the in-depth knowledge of corporate finance, capital markets and corporate governance of approximately 15 corporate and finance attorneys from K&E's Transactional Practice Group. K&E corporate attorneys, which number over 350 firmwide, command the roster of the different disciplines that must be marshalled in complex transactions, including commercial, tax, intellectual property, ERISA, real estate and others. As such, K&E corporate attorneys regularly render advisory services and structure corporate transactions on behalf of clients ranging from some of the largest Fortune 50 public corporations to privately held start-ups and emerging growth companies.

45. K&E advised and assisted the Debtors in every phase of these chapter 11 cases during the Total Compensation Period. To this end, as set forth in detail in **Exhibit B** of this Application, numerous K&E partners, counsel, associates and paraprofessionals from various K&E practice groups expended 37,583 hours during the Total Compensation Period rendering professional services on behalf of the Debtors and their estates. As discussed more fully above, the vast majority of the legal services provided to the Debtors and their estates by K&E during the Total Compensation Period are primarily attributable to the work performed by several attorneys in K&E's following four practice groups: Restructuring, Insolvency, Workout & Bankruptcy Group; Litigation Practice Group; Energy Practice Group; and Transactional Practice Group. Additionally, **Exhibit B** lists various K&E's legal professionals and paraprofessionals who, in the aggregate, expended substantially fewer hours

while rendering services to the Debtors and their estates throughout these chapter 11 cases than the core team of K&E personnel from the aforementioned practice areas. Those K&E professionals and paraprofessionals, many of whom had rendered significant services to NRG and its affiliates prior to the Commencement Date in numerous areas of law—particularly in light of the pre-negotiated nature of certain aspects of these chapter 11 cases—are included in the attached **Exhibit B** because such services were both necessary for and valuable to the Debtors and their estates.

46. During the Total Compensation Period, K&E's hourly billing rates for attorneys ranged from \$225 to \$725. Allowance of compensation in the amount requested would result in a blended hourly billing rate for attorneys of approximately \$413 (based on 30,618.60 recorded attorney hours at K&E's regular billing rates in effect at the time of the performance of services). The fees charged by K&E in these cases are billed in accordance with its existing billing rates and procedures in effect during the Total Compensation Period. The rates K&E charges for the services rendered by its professionals and paraprofessionals in these chapter 11 cases are the same rates K&E charges for professional and paraprofessional services rendered in comparable non-bankruptcy related matters. Such fees are reasonable based on the customary compensation charged by comparably skilled practitioners in comparable bankruptcy cases in a competitive national legal market.

**ACTUAL AND NECESSARY EXPENSES INCURRED BY K&E**

47. As set forth in **Exhibit C** and **Exhibit D** attached hereto, as well as in **Exhibit C** and **Exhibit D** of the First Interim Fee Application, K&E has incurred a total of \$1,552,352.14 in expenses on behalf of the Debtors in providing professional services during the Total Compensation Period. K&E states as follows regarding these expenses: K&E charges between \$0.10 and \$0.15 per page for internal copying charges; K&E charges for external copying charges at the provider's cost without markup; and K&E charges for computer research at the provider's cost without markup. The basis for these rates is K&E's calculation of the actual cost of these services. Each of these categories of expenses does not exceed and, in some instances, is well below the maximum rate set by the Guidelines.

These charges are intended to cover K&E's direct operating costs, which costs are not incorporated into the K&E hourly billing rates. Only clients who actually use services of the types set forth in Exhibit C and Exhibit D of this Application and the First Interim Fee Application are separately charged for such services. The effect of including such expenses as part of the hourly billing rates would impose that cost upon clients who do not require extensive photocopying and other facilities and services.

48. The time constraints imposed by the circumstances of these cases have required K&E attorneys and other employees to devote time during the evenings and on weekends to perform legal services on behalf of the Debtors. These extraordinary services were essential to meet deadlines, timely respond to inquiries on a daily basis from various creditors and other parties in interest, and satisfy the demands of the Debtors' businesses and the orderly administration of their estates. Consistent with firm policy, as further disclosed in the K&E retention application, attorneys and other K&E employees who worked late in the evenings or on weekends were reimbursed for their reasonable meal and transportation costs. K&E's regular practice is not to include components for those charges in overhead when establishing billing rates, but rather to charge its clients for these and all other out-of-pocket disbursements incurred during the regular course of the rendition of legal services. The reimbursement amounts do not exceed those set forth in the Guidelines.

49. In addition, due to the location of the Debtors' businesses, creditors, and other parties in interest in relation to K&E's offices, frequent long distance telephone calls were required. On many occasions, overnight delivery of documents and other materials was required as a result of the exigencies and circumstances of these cases. The disbursements for such services are not included in K&E's overhead for the purpose of setting billing rates, and K&E has made every effort to minimize its disbursements in these cases. The actual expenses incurred in providing professional services were necessary, reasonable, and justified under the circumstances to serve the needs of the Debtors in these chapter 11 cases.

**K&E'S REQUESTED COMPENSATION AND REIMBURSEMENT SHOULD BE ALLOWED**

50. Section 331 of the Bankruptcy Code provides for interim compensation of professionals and incorporates the substantive standards of section 330 to govern the Court's award of such compensation. 11 U.S.C. § 331. Section 330 provides that a court may award a professional employed under section 327 of the Bankruptcy Code "reasonable compensation for actual necessary services rendered . . . and reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1).

Section 330 also sets forth the criteria for the award of such compensation and reimbursement:

In determining the amount of reasonable compensation to be awarded, the court should consider the nature, extent, and the value of such services, taking into account all relevant factors, including --

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and
- (E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

11 U.S.C. § 330(a)(3).

51. In the instant case, K&E respectfully submits that the services for which it seeks compensation in this Application and the First Interim Fee Application were, at the time rendered, believed to be necessary for and beneficial to the Debtors and their estates, and were rendered in order to protect and preserve the Debtors' estates during the pendency of these chapter 11 cases. K&E respectfully submits that the services rendered to the Debtors were performed economically, effectively and efficiently, and the results obtained to date have benefited not only the Debtors, but also the Debtors' estates and the unsecured creditor body as a whole. K&E further submits that the compensation requested herein is reasonable in light of the nature, extent, and value of such services to the Debtors, their estates, and all parties in interest.

52. K&E attorneys and paraprofessionals spent a total of 37,583 hours during the Total Compensation Period, which services have a fair market value of \$13,673,650.00. As demonstrated by this Application, the First Interim Fee Application, and all of the exhibits submitted in support of both, K&E spent its time economically and without unnecessary duplication. In addition, the work conducted was carefully assigned to appropriate professionals or paraprofessionals according to the experience and level of expertise required for each particular task.

53. In sum, the services rendered by K&E were necessary and beneficial to the Debtors and their estates, and were consistently performed in a timely manner commensurate with the complexity, importance, novelty, and nature of the issues involved. Accordingly, approval of the compensation sought herein is warranted.

#### **MEMORANDUM OF LAW**

54. K&E respectfully submits that the relevant legal authorities are set forth herein and that this Application presents no novel issues of law. Thus, K&E respectfully submits that this Application satisfies the requirement set forth in the Southern District of New York Local Bankruptcy Rule 9013-1 that a separate memorandum of law be filed in support of this Application.

#### **NOTICE**

55. Notice of the Application has been provided to: (a) the United States Trustee for the Southern District of New York; (b) counsel to the Committee; (c) counsel to the administrative agents for the Debtors' prepetition secured lenders; (d) counsel to the Debtors' ad hoc committees, including the counsel to the bank global steering committee; (e) counsel to the indenture trustees pursuant to the Debtors' secured indentures; (f) counsel to the Debtors' postpetition lenders; (g) the indenture trustees pursuant to the Debtors' secured indentures; and (h) counsel to Xcel Energy Inc. Due to the voluminous nature of the Application, except for parties listed above in (a) through (h), the other parties will only receive notice of the Application, and not the actual Application itself. In that regard, K&E submits that no other or further notice is required.

## CONCLUSION

WHEREFORE, K&E respectfully requests entry of an order substantially in the form annexed hereto as Exhibit E (i) allowing and awarding compensation for professional services rendered during the Total Compensation Period in the amount of \$13,673,650.00 and reimbursement of all actual and necessary expenses incurred by K&E during the Total Compensation Period in the amount of \$1,552,352.14, without prejudice to K&E's right to seek additional compensation for services performed and expenses incurred during the Total Compensation Period not processed at the time of this Application, as provided further in paragraph 30 herein; (ii) authorizing and directing the Debtors to pay K&E the remaining fee holdback net amount of \$2,717,270.90 by January 30, 2004; (iii) authorizing McClain and the Nelson Debtors to continue to pay K&E on a monthly basis pursuant to the Administrative Order; and (iii) granting K&E such other and further relief as is just and proper.

Dated: New York, New York  
January 6, 2003

KIRKLAND & ELLIS LLP

By: /s/ Matthew A. Cantor  
Matthew A. Cantor (MC 7727)  
Robert G. Burns (RB 0970)  
Leonard A. Budyonny (LB 4194)  
Citigroup Center  
153 East 53<sup>rd</sup> Street  
New York, New York 10022  
Telephone: (212) 446-4800  
Facsimile: (212) 446-4900

Attorneys for Debtors and Debtors in Possession