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FILED
JUN 22 2001
KEENAN G. CANADY, CLERK
UNITED STATES BANKRUPTCY COURT
San Francisco, CA

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

17 In re
18 PACIFIC GAS and ELECTRIC
19 COMPANY, a California corporation,
20 Debtor.

No. 01-30923 DM
Chapter 11 Case
Hearing: July 12, 2001
Time: 10:00 a.m.
Place: 235 Pine Street, 22nd Floor
San Francisco, California

21 Federal I.D. No. 94-0742640

22 AMENDED APPLICATION FOR AUTHORITY TO EMPLOY AND TO
23 CONTINUE THE EMPLOYMENT OF SPECIAL COUNSEL TO DEBTOR
24 IN POSSESSION ON NON-BANKRUPTCY MATTERS, AND TO FILE
25 INFORMATION CONCERNING HOURLY RATES OF PROPOSED
26 COUNSEL UNDER SEAL (BANKRUPTCY CODE SECTION 107(B),
27 FEDERAL RULE OF BANKRUPTCY PROCEDURE 9018)

28 [SUPPORTING SUPPLEMENTAL DECLARATION OF RICHARD L.
MEISS AND SECOND SUPPLEMENTAL DECLARATION OF
WILLIAM J. LAFFERTY IN SUPPORT OF AMENDED APPLICATION
FILED SEPARATELY]

AMENDED APPLICATION FOR AUTHORITY TO EMPLOY SPECIAL COUNSEL TO DEBTOR

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HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN
A Professional Corporation

1 TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

2 On May 16, 2001, Pacific Gas and Electric Company, a California corporation,
3 and the debtor and debtor-in-possession in the within Chapter 11 case ("Applicant" or
4 "PG&E"), filed its Application for Authority to Employ and to Continue the Employment of
5 Special Counsel to Debtor-in-Possession on Non-Bankruptcy Matters (the "Application").
6 Through the Application, Applicant requested authority pursuant to Section 327(e) of the
7 United States Bankruptcy Code (the "Code") and Rule 2014(a) of the Federal Rules of
8 Bankruptcy Procedure to employ and continue the employment of the law firms listed on
9 Exhibit "A" thereto, as special counsel to Applicant, to perform the services listed thereon
10 and described herein, on the terms and conditions, including waivers of conflicts of interest,
11 set forth therein, including authorizing the employment of these professionals nunc pro tunc
12 to the commencement of this Chapter 11 bankruptcy case. For the Court's convenient
13 reference, a true and correct copy of the Application, is attached as Exhibit "A" to the
14 Second Supplemental Declaration of William J. Lafferty In Support Of Amended
15 Application For Authority To Employ And To Continue The Employment Of Special
16 Counsel to Debtor In Possession On Non-Bankruptcy Matters (hereinafter referred to as
17 "Second Supplemental Lafferty" and cited as "Lafferty Supp. Decl."), filed concurrently
18 herewith.

19 This Amended Application is filed in order to address three issues which were
20 raised by the filing of the Application, and in the Objection To Application To Employ And
21 To Continue The Employment Of Special Counsel To Debtor In Possession On Non-
22 Bankruptcy Matters filed by the Office of the United States Trustee ("UST"), on May 23,
23 2001, to wit: (1) clarification concerning the identity of the law firms which Applicant
24 proposes to employ, or to continue the employment of, through the Application (the "Non-
25 Bankruptcy Counsel"), (2) resolution of Applicant's request that, for the reasons set forth in
26 the Declaration of Richard L. Meiss In Support of Application For Authority To Employ
27 And To Continue The Employment Of Special Counsel To Debtor In Possession On Non-
28 Bankruptcy Matters ("Meiss Decl."), filed concurrently herewith, the hourly rates of the

AMENDED APPLICATION FOR AUTHORITY TO EMPLOY SPECIAL COUNSEL TO DEBTOR

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1 Special Counsel be provided to the Court under seal pursuant to Code Section 107(b)¹ and
2 Rule 9018² of the Federal Rules of Bankruptcy Procedure, and to the UST and to the Official
3 Committee of Unsecured Creditors (the "Committee"), subject to the provisions of
4 appropriate confidentiality agreements between and among Applicant, the UST and the
5 Committee, but that such information concerning hourly rates not be made generally
6 available in this case, and (3) clarifying that the proposed Non-Bankruptcy Counsel will
7 agree to file applications for compensation pursuant to Section 330 of the Code, and will
8 otherwise be bound by the Guidelines for Compensation as such may be in place or amended
9 from time to time.

10 Except as expressly modified hereby, the Application remains in full force and
11 effect, and accurately sets forth the relief requested by the Applicant on this subject.
12 Concurrently with the filing of this Amended Application, and consistent with the directives
13 of the "Case Management Order" approved by the Court in this case, Applicant has also
14 filed its Motion Of Debtor Pacific Gas And Electric To Submit Hourly Rate Of Proposed
15 Special Counsel Under Seal (11 U.S.C. §107(b)) And Memorandum Of Points And
16 Authorities In Support Thereof (the "Motion").

17 1. Clarification of the Identity of Special Counsel. The Application sought the
18 employment, or continuation of employment, of seventy-four law firms which had rendered
19 services to Applicant on non-bankruptcy matters prior to the commencement of Applicant's
20 Chapter 11 bankruptcy case on April 6, 2001. In support of the Application, Applicant also
21 filed the Declaration of William J. Lafferty (the "Lafferty Declaration"), to which were
22 attached as a group exhibit copies of the twenty-four declarations, pursuant to Section 327(e)
23

24 ¹Section 107(b) provides in pertinent part that "On request of a party in interest, the
25 bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court
26 may—(1) protect an entity with respect to a trade secret, or confidential research,
27 development or commercial information."

28 ²Rule 9018 provides in pertinent part that "On motion or on its own initiative, with or
without notice, the court may make any order which justice requires (1) to protect the estate
or any entity in respect of any trade secret or other confidential research, development or
commercial information."

1 of the Bankruptcy Code (the "Code") and Federal Rule of Bankruptcy Procedure 2014 (the
2 "Non-Bankruptcy Counsel Declarations"), of those of the proposed Non-Bankruptcy
3 Counsel who had been able to deliver such declarations to Applicant on or before May 15,
4 2001. Subsequent thereto, on or about June 1, 2001, Applicant also filed the Supplemental
5 Declaration of William J. Lafferty (the "Supplemental Lafferty Declaration"); to which were
6 attached as a group exhibit thirty-eight additional Non-Bankruptcy Counsel Declarations
7 which had been received between the filing of the Application and the date of the
8 Supplemental Lafferty Declaration.

9 Applicant is informed and believes that it has now received Non-Bankruptcy
10 Counsel Declarations from each proposed Non-Bankruptcy Counsel which is willing and
11 able to become employed as special counsel to Applicant pursuant to Code Section 327(e)
12 and Federal Rules of Bankruptcy Procedure 2014. Accordingly, Applicant hereby amends
13 its Application to limit its request to employ proposed Non-Bankruptcy Counsel to those
14 firms listed on Exhibit "A" hereto. For additional clarity, Applicant also submits, as a group
15 exhibit to the Second Supplemental Lafferty Declaration, all of the Non-Bankruptcy Counsel
16 Declarations. Applicant believes that it has thus satisfied the objection of the UST that not
17 all proposed Non-Bankruptcy Counsel had filed Non-Bankruptcy Counsel Declarations.
18 Applicant hereby requests that the Court authorize employment, or the continuation of
19 employment, of the proposed Non-Bankruptcy Counsel, as set forth and listed on Exhibit
20 "A" hereto.³

21 2. Information Concerning Hourly Rates. The Non-Bankruptcy Counsel
22 Declarations presently on file do not contain information concerning the hourly rates of
23 proposed Non-Bankruptcy Counsel. Applicant's counsel informed the UST that Applicant
24 intended to file the Application and Non-Bankruptcy Counsel Declarations without
25 information concerning the hourly rate, but that Applicant desired to make such information
26

27 ³If PG&E's needs require the retention of a firm not listed on Exhibit A, it will seek the
28 requisite approval to retain and compensate the firm.

1 available to the Court, the UST and the Committee, by a filing under seal or by some other
2 means adequate to assure the continued confidentiality of this information. The UST's
3 Objection also requested that the Applicant not be permitted to file such information under
4 seal.

5 For the reasons set forth in the Motion and in the Meiss Declaration, Applicant
6 believes that it could be substantially harmed by the requirement that it file the hourly rates
7 of Non-Bankruptcy Counsel, and that no important public policy would be served by
8 requiring such a public filing.

9 Prior to the filing of its Chapter 11 Petition, PG&E regularly engaged and/or
10 retained more than seventy law firms both inside and outside California on a wide variety of
11 legal matters, in areas including, for example, regulatory proceedings, complex commercial
12 transactions and litigation, environmental and property matters and personal injury, property
13 damage and employment litigation.

14 Because of the large volume and variety of legal services it requires, PG&E
15 strives to obtain the best possible fee arrangements consistent with its needs for specific
16 expertise and high quality representation. PG&E has typically engaged outside counsel
17 through formal or informal competitive processes resulting in negotiated rates for legal
18 services. In order to encourage competition, PG&E typically spreads out its outside legal
19 work, particularly in such high volume areas as commercial and personal injury/property
20 damage defense, among a number of firms and engages multiple firms, for similar types of
21 legal services, within single geographic areas. Depending on its specific needs, negotiating
22 leverage, volume, and other factors, PG&E contracts with outside counsel at a variety of
23 rates for essentially similar services. In some cases, these negotiations have resulted in
24 discounted rates below what the law firms in question charge other similarly situated clients.

25 In order to obtain the most favorable rate agreements possible, PG&E does not
26 divulge to the firms it engages the rates paid to other firms for similar services. Because of
27 its concerns regarding the confidentiality of these agreements, PG&E treats the agreements
28 as attorney-client privileged and does not provide copies of the actual contracts with outside

1 counsel to anyone other than the pertinent firm.

2 PG&E is very concerned that the rate agreements it has negotiated with the more
3 than 60 firms it seeks to continue to employ not be made public, for the following reasons:

4 a. The type and volume of outside legal services PG&E requires will not
5 change appreciably as a result of the bankruptcy filing. Therefore, PG&E will continue to
6 require the services of these firms at the best rates available.

7 b. If the rates PG&E has negotiated with its various outside counsel are
8 made public, there is a risk that its ability to get the best possible rates will be jeopardized.
9 This will make it more difficult for PG&E to negotiate for lower rates in the future and/or
10 will risk the loss of the services of some firms, thus decreasing the scope of the competitive
11 market. A disclosure creates an unnecessary risk that PG&E will pay more for the same
12 legal services.

13 c. The complexity and uniqueness of PG&E's business and legal affairs
14 makes stability, in regards to its legal representation, very important. The potential loss or
15 dissatisfaction due to rate concerns of firms charging lower rates will be unnecessarily
16 disruptive to PG&E.

17 d. PG&E is concerned that it not put firms, with which it has made
18 particularly favorable rate agreements, in a position to have those arrangements revealed to
19 their other clients. If that happens, these firms are likely to be pressured either to raise the
20 rates they charge PG&E or lower those charged to others. Either alternative will be
21 detrimental to PG&E and its ongoing relationships with its outside counsel.

22 For all of the foregoing reasons, PG&E believes that the information concerning
23 the hourly rates charged by proposed Non-Bankruptcy Counsel are confidential commercial
24 information which this Court can and should protect by permitting the information to be
25 filed under seal. PG&E recognizes that in order to rule on the Amended Application, the
26 Court must have the information regarding the rates charged PG&E by each of the proposed
27 Non-Bankruptcy Counsel. PG&E proposes to provide this information to the Court under
28 seal. It also wishes to provide this information to the Creditor's Committee, under a

1 confidentiality agreement; and, if possible, to the UST, also under a confidentiality
2 agreement. PG&E believes that further dissemination of this information is unnecessary,
3 and would be damaging to its financial interests.

4 3. Clarification concerning Applications for Compensation. The UST
5 expressed concerns that the Application was not sufficiently clear regarding Non-
6 Bankruptcy Counsel's intentions to file applications for compensation pursuant to Section
7 330 of the Code, and agreement to be bound by the Guidelines for Compensation, filed by
8 the UST, as such may be in effect from time to time. For the record, Applicant confirms that
9 each of the Non-Bankruptcy Counsel will apply for fees pursuant to proper applications for
10 compensation, and will be bound by the Guidelines.

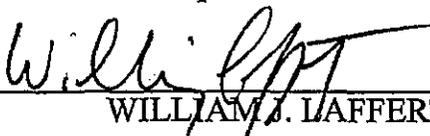
11
12 CONCLUSION

13 WHEREFORE, Applicant prays that it be authorized to employ and to continue
14 the employment of the Non-Bankruptcy Counsel to represent Applicant on the various non-
15 bankruptcy matters on which the Non-Bankruptcy Counsel had represented Applicant prior
16 to the commencement of this case, as well as non-bankruptcy matters arising thereafter, as
17 set forth in the Application, this Amended Application, on Exhibit "A" hereto, and the
18 various declarations in support of the Application and this Amended Application, on the
19 terms and conditions described therein.

20 DATED: June 22, 2001

21 Respectfully,

22 HOWARD, RICE, NEMEROVSKI, CANADY,
23 FALK & RABKIN
A Professional Corporation

24 By: 
25 WILLIAM J. LAFFERTY

26 Attorneys for Debtor and Debtor in Possession
27 PACIFIC GAS AND ELECTRIC COMPANY

28 WD 062201/1-1419904/924647/v1