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13 PACIFIC GAS and ELECTRIC COMPANY

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.  
21 Federal I.D. No. 94-0742640

No. 01-30923 DM

Chapter 11 Case

Date: September 14, 2004

Time: 1:30 p.m.

Judge: Hon. Dennis Montali

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

22 DECLARATION OF WILLIAM J. LAFFERTY IN SUPPORT OF FINAL  
23 APPLICATION BY PACIFIC GAS AND ELECTRIC COMPANY FOR  
24 AUTHORITY TO PAY COMPENSATION AND REIMBURSEMENT OF  
25 EXPENSES TO SPECIAL COUNSEL TO DEBTOR IN POSSESSION ON  
26 NON-BANKRUPTCY MATTERS, PURSUANT TO  
27 BANKRUPTCY CODE SECTION 330  
28

LAFFERTY DECL ISO FINAL FEE APPL FOR SPECIAL COUNSEL (NON-BANKRUPTCY MATTERS)

**FILED**

JUL - 9 2004

UNITED STATES BANKRUPTCY COURT  
SAN FRANCISCO, CA

1 I, William J. Lafferty, declare as follows:

2 1. I am an attorney at law, licensed to practice in this state, and admitted to  
3 practice before this Court. I am a director of the law firm Howard, Rice, Nemerovski,  
4 Canady, Falk & Rabkin, A Professional Corporation, general bankruptcy counsel to Pacific  
5 Gas and Electric Company ("PG&E"), the Reorganized Debtor in the above captioned  
6 Chapter 11 bankruptcy. I make this declaration from personal knowledge, and could, if  
7 called as a witness, competently testify to the matters set forth herein.

8 2. I make this declaration in support of the Final Application By Pacific Gas  
9 And Electric Company For Authority To Pay Compensation And Reimbursement Of  
10 Expenses To Special Counsel to Debtor In Possession On Non-Bankruptcy Matters (the  
11 "Application").

12 3. PG&E filed a voluntary petition for relief under Chapter 11 of the  
13 Bankruptcy Code on April 6, 2001 (the "Petition Date"). A trustee was not appointed in this  
14 case, and PG&E continued to function as a debtor-in-possession pursuant to Sections 1107  
15 and 1108 of the Bankruptcy Code. On December 22, 2003, this Court entered its order  
16 confirming the Plan of Reorganization Under Chapter 11 of the Bankruptcy Code for Pacific  
17 Gas and Electric Company Dated July 31, 2003, As Modified by Modifications Dated  
18 November 6, 2003 and December 19, 2003 (the "Plan").<sup>1</sup> The Effective Date of the Plan  
19 occurred on April 12, 2004. From and after the Effective Date, PG&E operates as the  
20 Reorganized Debtor pursuant to the Plan. The period covered by the Application is from the  
21 Petition Date until the Effective Date.

22 4. PG&E filed its Application for Authority to Employ and to Continue the  
23 Employment of Special Counsel to Debtor in Possession on Non-Bankruptcy Matters (the  
24 "Initial Employment Application") on May 16, 2001. In that Initial Employment  
25 Application, PG&E set forth facts demonstrating the need (a) to continue the employment of  
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27 <sup>1</sup> Capitalized terms used herein without definition have the meanings ascribed to them  
28 in the Plan.

1 counsel who had been employed by PG&E on non-bankruptcy matters prior to the Petition  
2 Date, and (b) to employ certain other counsel from and after the Petition Date, also to assist  
3 PG&E on non-bankruptcy matters, as special counsel pursuant to the provisions of Section  
4 327(e) of the Bankruptcy Code (such counsel are referred to collectively herein, and in the  
5 Application, as the "Special Counsel"). A true and correct copy of the Initial Employment  
6 Application is attached as Exhibit "A" hereto.

7           5. Briefly summarized, the Initial Employment Application stated that PG&E  
8 was an investor-owned utility which provides gas and electric services to more than 4.5  
9 million customers in Central and Northern California serving a total population of about 13  
10 million, and that the scope of PG&E's business operations within the state of California and  
11 beyond are extremely broad and complex. In the ordinary course of the conduct of its  
12 business prior to the commencement of this bankruptcy case, PG&E regularly employed a  
13 large number of law firms and other professionals to assist it in conducting its business  
14 affairs and to render legal services on a wide variety of subjects. As is set forth with greater  
15 particularity in the Application, the Initial Employment Application listed categories of non-  
16 bankruptcy services on which it expected that Special Counsel would assist PG&E, including  
17 regulatory matters, environmental and land use matters, legislative matters, plaintiff's  
18 matters, defense matters, and miscellaneous matters.

19           6. The Initial Employment Application was also supported by an Exhibit "A"  
20 attached thereto, a list of the firms which had been employed by PG&E prior to the  
21 commencement of this case on non bankruptcy matters, with information concerning the  
22 area(s) in which the firms had provided services, and the historical average monthly billings  
23 rendered by each firm to PG&E during the year prior to the commencement of the case.

24           7. Due to the volume of the services which PG&E requires at any given time,  
25 and consistent with its business strategies concerning the most efficient and effective manner  
26 of obtaining legal services on the most competitive basis, from time to time PG&E employs  
27 more than one law firm to perform a category (or categories) of services. Consistent with  
28 these objectives, prior to the commencement of this case, PG&E considered the hourly rates

1 at which it engaged various firms to be proprietary in nature, and believed that its ability to  
2 continue to employ counsel on the most advantageous terms depended upon continuing to  
3 keep confidential those hourly rates.

4 8. In the course of preparing the Initial Employment Application, PG&E  
5 realized that the hourly rates at which a Debtor proposes to engage counsel typically are  
6 disclosed either in the employment application, or in the supporting declaration(s) of the  
7 counsel proposed to be engaged. However, because it believed that it was critical to treat the  
8 hourly rates information as confidential in order to maintain PG&E's competitive advantage  
9 in employing counsel, PG&E determined to seek to file under seal the hourly rates  
10 information for the proposed Special Counsel.

11 9. In connection with these efforts, I contacted the Office of the United States  
12 Trustee ("UST") to determine whether the UST would agree to permit PG&E to file the  
13 hourly rates information under seal. After discussion, the UST declined to agree to this  
14 request. On May 23, 2001, the UST filed an Objection to Application to Employ and To  
15 Continue the Employment of Special Counsel To Debtor in Possession on Non-Bankruptcy  
16 Matters (the "UST Objection"). The UST Objection (a) requested clarification concerning  
17 the law firms to be employed on non-bankruptcy matters, and the scope of non-bankruptcy  
18 services to be rendered to PG&E, (b) requested clarification concerning proposed special  
19 counsel's adherence to the Guidelines for Compensation promulgated by the UST, including  
20 whether special counsel would file final applications for compensation, and (c) objected to  
21 PG&E's request to file the information concerning hourly rates for special counsel under  
22 seal.

23 10. In response thereto, on June 22, 2001, PG&E filed (a) its "Amended  
24 Application for Authority to Employ and to Continue the Employment of Special Counsel to  
25 Debtor in Possession on Non-Bankruptcy Matters, and to File Information Concerning  
26 Hourly Rates of Proposed Counsel Under Seal (Bankruptcy Code Section 107(B), Federal  
27 Rule of Bankruptcy Procedure 9018)" (the "Amended Application") and (b) its "Motion of  
28 Debtor Pacific Gas and Electric to Submit Hourly Rates of Proposed Counsel Under Seal (11

1 U.S.C. §107(b)) and Memorandum of Points and Authorities in Support Thereof” (the  
2 “Motion to File Under Seal”). True and correct copies of the Amended Application and the  
3 Motion to File Under Seal are attached as Exhibits “B” and “C”, respectively, hereto.

4 11. On July 12, 2001, the Court conducted a consolidated hearing on the Initial  
5 Employment Application, the Amended Application and the Motion to File Under Seal. At  
6 the conclusion of the consolidated hearing, the Court granted the Initial Employment  
7 Application as amended by the Amended Application and the Motion to File Under Seal. On  
8 August 16, this Court entered its (a) Order Approving Amended Application for Authority to  
9 Employ and to Continue the Employment of Special Counsel to Debtor in Possession on  
10 Non-Bankruptcy Matters, and to File Information Concerning Hourly Rates of Proposed  
11 Special Counsel Under Seal (Bankruptcy Code Section 107(B), Federal Rule of Bankruptcy  
12 Procedure 9018) (the “Order Approving Employment”), and (b) Order Approving Motion of  
13 Debtor Pacific gas and Electric Company To Submit Hourly Rate of Proposed Special  
14 Counsel Under Seal (11 U.S.C. §107(b)) (the “Order Re Filing Under Seal”). True and  
15 correct copies of the Order Approving Employment and the Order Re Filing Under Seal are  
16 attached as Exhibits “D” and “E,” respectively, hereto<sup>2</sup>

17 12. Pursuant to the provisions of the Order Approving Employment and the  
18 Order Re Filing Under Seal, this Court authorized PG&E, pursuant to Section 327(e) of the  
19 Code, to employ special counsel to PG&E on non-bankruptcy matters, and to compensate  
20 such special counsel for non-bankruptcy matters on a current, interim basis, subject to the  
21 requirement that a final fee application be filed, and that such a fee application be approved  
22 by this Court.

23 13. Subsequent to the entry of the Order Approving Employment, PG&E  
24 moved, on numerous occasions, to amend the Order Approving Employment by adding

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26 <sup>2</sup>On September 17, 2001, this Court entered its “Amended Order Approving Amended  
27 Application, etc.” The Amended Order corrected an inadvertent failure to include the firm  
28 Thelen, Reed and Priest among the Special Counsel whose employment was approved  
pursuant to the Amended Application and the Order Approving Employment. In all other  
respects, the Order Approving Employment remained in full force and effect.

1 special counsel to assist PG&E with additional non-bankruptcy related tasks, as required  
2 from time to time (collectively, the “Supplemental Employment Applications”). This Court  
3 approved each of the Supplemental Employment Applications. True and correct copies of  
4 the various Orders Approving Supplemental Employment Applications are attached as  
5 Exhibits “F” through “P” hereto. Most recently, on July 8, 2004, PG&E filed its Twelfth  
6 Supplement to Application to Employ and Continue the Employment of Special Counsel on  
7 Non-Bankruptcy Matters. A true and correct copy of this Twelfth Supplement is attached as  
8 Exhibit “Q” hereto.

9           14. In connection with the Initial Employment Application and the  
10 Supplemental Employment Applications, each proposed Special Counsel executed two  
11 declarations: (a) a declaration which (i) described the scope of the services which the firm  
12 would supply to PG&E, (ii) described other details of the engagement, including the hourly  
13 rates proposed to be charged PG&E for the work performed, and (iii) disclosed the firm’s  
14 relationships or connections with other parties in the Case, and any conflicts of interest  
15 caused by such relationships or connections; and (b) a declaration which contained all of the  
16 information contained in the declaration described in subpart (a) of this paragraph, but  
17 omitted information concerning hourly rates. Pursuant to the provisions of the Order  
18 Approving Employment, the declaration described in subpart (a) was filed under seal, and  
19 the declaration described in subpart (b) was filed in the Court’s Case file.

20           15. During the course of its Chapter 11 bankruptcy case, PG&E employed,  
21 received services from and paid compensation and reimbursement of expenses to 89 separate  
22 firms.<sup>3</sup> Attached as Exhibit “A” to the Application is an “Index of Special Counsel—Total  
23 Payments,” which lists the name of the Special Counsel, the amount which PG&E believes  
24 that the Special Counsel have been paid as compensation and reimbursement of expenses  
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26           <sup>3</sup>For a variety of reasons pertaining to its business judgment, from time to time  
27 throughout the duration of this case, PG&E determined not to engage, or not to request  
28 services from, Special Counsel whose employment had been authorized (but not required) by  
the Order Approving Employment and the Supplemental Employment Orders.

1 during the period from the Petition Date to the Effective Date (the "Compensation Period"),  
2 and the amount which Special Counsel believes it has been paid during the same period.

3 16. Concurrent with the filing of this Application, PG&E is also filing  
4 Declarations of Special Counsel (the "Special Counsel Declarations")<sup>4</sup> from the various  
5 Special Counsel who were employed by PG&E, rendered services and were compensated  
6 during the Compensation Period. These Special Counsel Declarations provide additional  
7 support for the Application, specifically, (a) the date on which Special Counsel became  
8 employed during the Compensation Period, (b) the nature of the services performed by  
9 Special Counsel, (c) a narrative description of the services performed, (d) certification that  
10 the Special Counsel complied with the requirements of the Order Approving Employment,  
11 and (where relevant) the Supplemental Employment Order, (e) certification that, to the best  
12 of their knowledge and belief, on those occasions on which the Order Approving  
13 Employment required it be done, that PG&E forwarded copies of their monthly invoices to  
14 the UST and counsel to the Official Committee of Unsecured Creditors (the "Committee")  
15 for review, and that, to the best of their knowledge, on no occasion did the UST or the  
16 Committee object to their fees or expenses, and (f) the amount which Special Counsel  
17 believes it has been paid during for service rendered during the Compensation Period.<sup>5</sup>

18 17. The information set forth in the Index of Special Counsel and the  
19 Declarations of Special Counsel is subject to two clarifications. First, the amounts set forth  
20 in the Index of Special Counsel and the Declarations of Special Counsel do not include  
21 amounts which pertain to services rendered during the last stages of the Compensation  
22 Periods, and that have not been paid as of the date of filing this Application. These fees and

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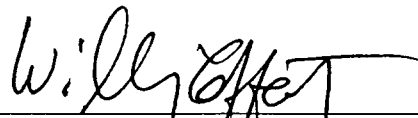
23 <sup>4</sup>Because the Special Counsel Declarations are so numerous, and are, in the aggregate,  
24 voluminous, PG&E has filed these declarations under a form of "Submission of Declarations  
25 of Special Counsel in Support of Final Application for Compensation", which indexes the  
Special Counsel Declarations alphabetically, by name of firm.

26 <sup>5</sup>Consistent with the provisions of and the rationale underlying the Order Approving  
27 Employment, the Special Counsel Declarations do not include Special Counsels' invoices,  
28 nor does PG&E propose to file Special Counsels' invoices with the Court. Of course, if the  
Court or the UST desires to review any invoice(s), PG&E and Special Counsel will make any  
such requested invoices available to the Court or the UST.

1 expenses remain unpaid either because they are required to be reviewed by the UST and the  
2 Committee per the terms of the Order Approving Employment, and the review period has not  
3 yet expired, or because the payment has simply not been processed by PG&E (True and  
4 correct copies of the cover letters from Richard Meiss, in-house counsel to PG&E, dated  
5 June 23, June 29, and June 30, 2004, transmitting invoices to the UST and Committee, are  
6 attached as Exhibits "R", "S" and "T" hereto). Attached as Exhibit "B" to the Application is  
7 a "Schedule of Payments to Be Made to Special Counsel" which lists, to the best of PG&E's  
8 current knowledge, the Special Counsel with outstanding invoices and the amount of such  
9 invoices. PG&E expects that these amounts will be paid in the ordinary course, prior to the  
10 hearing on this Application.

11 18. Second, although PG&E and Special Counsel have made diligent efforts to  
12 reconcile the amounts which the Special Counsel believe they have been paid during the  
13 Compensation Period with the amounts that PG&E believes it has paid during that period,  
14 inevitably, with the number of firms involved and the irregular commencement and cut-off  
15 dates of the Compensation Period, some discrepancies exist. PG&E has determined not to  
16 pursue any discrepancy less than either approximately one percent (1%) of the total amount  
17 billed by the special counsel, or \$1000. PG&E is working to reconcile the other  
18 discrepancies, and hopes to have such reconciliation complete prior to the date on which  
19 Notice of Hearing of this Application is sent to creditors and interested parties.

20 I declare under penalty of perjury of the laws of the United States and the state of  
21 California that the foregoing is true and accurate in all respects, and that this declaration was  
22 executed in San Francisco, California, on July 9, 2004.

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WILLIAM J. LAFFERTY

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27 WD 070904/1-141990004/1160290/v1