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UNITED STATES BANKRUPTCY COURT
SAN FRANCISCO, CA

7 Attorneys for Debtor and Debtor in Possession
PACIFIC GAS and ELECTRIC COMPANY
8

9 UNITED STATES BANKRUPTCY COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 In re

13 PACIFIC GAS and ELECTRIC
COMPANY, a California corporation,

14 Debtor.
15

16 Federal I.D. No. 94-0742640
17

Case 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

18 **FINAL APPLICATION BY PACIFIC GAS AND ELECTRIC**
19 **COMPANY FOR AUTHORITY TO PAY COMPENSATION AND**
20 **REIMBURSEMENT OF EXPENSES TO SPECIAL COUNSEL TO**
21 **DEBTOR IN POSSESSION ON NON-BANKRUPTCY MATTERS,**
PURSUANT TO BANKRUPTCY CODE SECTION 330

22 [DECLARATION OF WILLIAM J. LAFFERTY AND SUBMISSION OF
23 DECLARATIONS OF SPECIAL COUNSEL FILED CONCURRENTLY HEREWITH]
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FINAL FEE APPL FOR SPECIAL COUNSEL (NON-BANKRUPTCY MATTERS) No. 01-30923 DM

1 TO THE HONORABLE DENNIS MONTALI, UNITED STATES BANKRUPTCY JUDGE:

2 Pacific Gas and Electric Company ("PG&E"), hereby applies, on behalf of the
3 attorneys and law firms employed during the course of PG&E's chapter 11 case as special
4 counsel on non-bankruptcy matters (collectively, the "Special Counsel") pursuant to 11
5 U.S.C. Section 327(e) (hereinafter, the "Bankruptcy Code"), for final approval of fees paid
6 and expenses reimbursed to Special Counsel for the period April 6, 2001, through April 11,
7 2004. This Application (the "Application") is made in accordance with the provisions of
8 Section 330 of the Bankruptcy Code, and is supported by the Declaration of William J.
9 Lafferty, and the Declarations of the Special Counsel, which have been filed concurrently
10 herewith.

11
12 INTRODUCTION AND BACKGROUND

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

23 PG&E filed its Application for Authority to Employ and to Continue the
24 Employment of Special Counsel to Debtor in Possession on Non-Bankruptcy Matters (the
25 "Initial Employment Application") on May 16, 2001. In that Initial Employment
26 Application, PG&E set forth facts demonstrating the need (a) to continue the employment of

27 ¹Capitalized 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. For the convenience of the Court and interested parties, a
5 true and correct copy of the Initial Employment Application is attached as Exhibit "A" to the
6 Declaration of William J. Lafferty, filed concurrently herewith (the "Lafferty Declaration").

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

17 (a) Regulatory Matters: represent and advise PG&E regarding matters before
18 state and federal regulatory agencies, including, for example, the California Public Utilities
19 Commission, the Federal Energy Regulatory Commission, the Nuclear Regulatory
20 Commission, and Canadian federal and provincial agencies. Regulatory matters include rate
21 making, the licensing of facilities, customer relations and complaints, export permits,
22 wholesale supplier issues, and the like.

23 (b) Environmental And Land Use Matters: represent and advise PG&E
24 regarding its land rights, environmental obligations and responsibilities, hazardous waste
25 matters, air and water quality matters, California Environmental Quality Act matters, and
26 National Environmental Policy Act matters. Land rights matters include, for example, land
27 rights acquisition, land sales and leasing, clarifying and defending land rights, federal and
28 state land agency matters such as U. S. Forest Service special use permits, State Lands

1 Commission permits, U. S. Corps of Engineers permits, CalTrans encroachment permits, and
2 the like.

3 (c) Legislative Matters: advise PG&E regarding compliance with California's
4 Political Reform Act and review and advise PG&E on proposed legislation and regulations
5 at federal, state, and local levels.

6 (d) Plaintiff's Matters: represent and advise PG&E with respect to its rights on
7 commercial, insurance coverage, intellectual property, credit and collection, subrogation,
8 business practices, antitrust, U. S. Court of Federal Claims, and other matters where PG&E
9 may have been damaged by the actions, inactions, or omissions of others in the United States
10 or elsewhere.

11 (e) Defense Matters: represent and advise PG&E with respect to personal
12 injury and property damage matters, employment, employment discrimination, wage and
13 hour, worker's compensation, commercial, subrogation, intellectual property, work place
14 conditions, business practices, antitrust, and other matters where other allege that the actions,
15 in-actions, or omissions of PG&E caused others damage in the United States or elsewhere, to
16 the extent that such matters are not stayed by reason of the provisions of section 362(a)(1) of
17 the United States Bankruptcy Code.²

18 (f) Other And Miscellaneous Matters: represent and advise PG&E on a variety
19 of issues such as corporate governance, intellectual property, copyright, telecommunications
20 law, cyberlaw, aviation law, criminal law, admiralty law, insurance law, family law, labor
21 law, mechanics and materialsmen liens, Miller Act liens, wage garnishment law, attachment
22 law, and public agency contracts.

23 The Initial Employment Application was also supported by an Exhibit "A"
24 attached thereto, a list of the firms which had been employed by PG&E prior to the

25 ²As is also set forth in certain of the Declarations of Special Counsel in support of this
26 Application, during the course of this case, the Court granted relief from stay to numerous
27 parties who had asserted claims against PG&E in non-bankruptcy courts to permit those
28 actions to liquidate the claims against PG&E in the forum in which the action had been
commenced, thus necessitating a relatively high level of services rendered by Special
Counsel on Defense matters.

1 commencement of this case on non bankruptcy matters, with information concerning the
2 area(s) in which the firms had provided services, and the historical average monthly billings
3 rendered by each firm to Applicant during the year prior to the commencement of the case.

4 Due to the volume of the services which PG&E requires at any given time, and
5 consistent with its business strategies concerning the most efficient and effective manner of
6 obtaining legal services on the most competitive basis, from time to time PG&E employs
7 more than one law firm to perform a category (or categories) of services. Consistent with
8 these objectives, prior to the commencement of this case, PG&E considered the hourly rates
9 at which it engaged various firms to be proprietary in nature, and believed that its ability to
10 continue to employ counsel on the most advantageous terms depended upon continuing to
11 keep confidential those hourly rates.

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

19 Initially, counsel for PG&E requested that the Office of the United States Trustee
20 ("UST") agree to permit PG&E to file the hourly rates information under seal. Lafferty
21 Decl. ¶9. However, the UST declined to agree to this request, and on May 23, 2001, filed an
22 Objection to Application to Employ and To Continue the Employment of Special Counsel To
23 Debtor in Possession on Non-Bankruptcy Matters (the "UST Objection"). *Id.* The UST
24 Objection (a) requested clarification concerning the law firms to be employed on non-
25 bankruptcy matters, and the scope of non-bankruptcy services to be rendered to PG&E,
26 (b) requested clarification concerning proposed special counsel's adherence to the
27 Guidelines for Compensation promulgated by the UST, including whether special counsel
28 would file final applications for compensation and (c) objected to PG&E's request to file the

1 information concerning hourly rates for special counsel under seal.

2 In response thereto, on June 22, 2001, PG&E filed (a) its "Amended Application
3 for Authority to Employ and to Continue the Employment of Special Counsel to Debtor in
4 Possession on Non-Bankruptcy Matters, and to File Information Concerning Hourly Rates of
5 Proposed Counsel Under Seal (Bankruptcy Code Section 107(B), Federal Rule of
6 Bankruptcy Procedure 9018)" (the "Amended Application") and (b) its "Motion of Debtor
7 Pacific Gas and Electric to Submit Hourly Rates of Proposed Counsel Under Seal (11 U.S.C.
8 §107(b)) and Memorandum of Points and Authorities in Support Thereof" (the "Motion to
9 File Under Seal"). True and correct copies of the Amended Application and the Motion to
10 File Under Seal are attached as Exhibits "B" and "C," respectively, to the Lafferty
11 Declaration.

12 On July 12, 2001, the Court conducted a consolidated hearing on the Initial
13 Employment Application, the Amended Application and the Motion to File Under Seal. At
14 the conclusion of the consolidated hearing, the Court granted the Initial Employment
15 Application as amended by the Amended Application and the Motion to File Under Seal. On
16 August 16, this Court entered its (a) Order Approving Amended Application for Authority to
17 Employ and to Continue the Employment of Special Counsel to Debtor in Possession on
18 Non-Bankruptcy Matters, and to File Information Concerning Hourly Rates of Proposed
19 Special Counsel Under Seal (Bankruptcy Code Section 107(B), Federal Rule of Bankruptcy
20 Procedure 9018) (the "Order Approving Employment") and (b) Order Approving Motion of
21 Debtor Pacific gas and Electric Company To Submit Hourly Rate of Proposed Special
22 Counsel Under Seal (11 U.S.C. §107(b)) (the "Order Re Filing Under Seal"). True and
23 correct copies of the Order Approving Employment and the Order Re Filing Under Seal are
24 attached as Exhibits "D" and "E," respectively, to the Lafferty Declaration.³

25 _____
26 ³On 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 Pursuant to the provisions of the Order Approving Employment and the Order Re
2 Filing Under Seal, this Court authorized PG&E, pursuant to Section 327(e) of the Code, to
3 employ special counsel to PG&E on non-bankruptcy matters, and to compensate such special
4 counsel for non-bankruptcy matters on a current, interim basis, subject to the requirement
5 that a final fee application be filed, and that such a fee application be approved by this Court.

6 Subsequent to the entry of the Order Approving Employment, PG&E moved, on
7 numerous occasions, to amend the Order Approving Employment by adding special counsel
8 to assist PG&E with additional non-bankruptcy related tasks, as required from time to time
9 (collectively, the "Supplemental Employment Applications"). This Court approved each of
10 the Supplemental Employment Applications. True and correct copies of the various Orders
11 Approving Supplemental Employment Applications are attached as Exhibits "F" through "P"
12 of the Lafferty Declaration. Most recently, on July 8, 2004, PG&E filed its Twelfth
13 Supplement to Application to Employ and Continue the Employment of Special Counsel on
14 Non-Bankruptcy Matters. A true and correct copy of this Twelfth Supplement is attached as
15 Exhibit "Q" to the Lafferty Declaration.

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

1 PAYMENT OF COMPENSATION AND REIMBURSEMENT OF
2 EXPENSES FOR SPECIAL COUNSEL

3 During the course of its chapter 11 bankruptcy case, PG&E employed, received
4 services from and paid compensation and reimbursement of expenses to 89 separate firms.
5 Lafferty Decl. ¶15.⁴ Attached hereto as Exhibit "A" is an "Index of Special Counsel-Total
6 Payments," which lists the name of the Special Counsel, the amount which PG&E believes
7 that the Special Counsel have been paid as compensation and reimbursement of expenses
8 during the period from the Petition Date to the Effective Date (the "Compensation Period"),
9 and the amount which Special Counsel believes it has been paid during the same period.

10 Concurrent with the filing of this Application, PG&E is also filing Declarations
11 of Special Counsel (the "Special Counsel Declarations")⁵ from the various Special Counsel
12 who were employed by PG&E, rendered services and were compensated during the
13 Compensation Period. These Special Counsel Declarations provide additional support for
14 this Application, specifically, (a) the date on which Special Counsel became employed
15 during the Compensation Period, (b) the nature of the services performed by Special
16 Counsel, (c) a narrative description of the services performed, (d) certification that the
17 Special Counsel complied with the requirements of the Order Approving Employment, and
18 (where relevant) the Supplemental Employment Order, (e) certification that, to the best of
19 their knowledge and belief, on those occasions on which the Order Approving Employment
20 required it be done, that PG&E forwarded copies of their monthly invoices to the UST and
21 counsel to the Official Committee of Unsecured Creditors (the "Committee") for review, and
22 that, to the best of their knowledge, on no occasion did the UST or the Committee object to
23

24 ⁴For a variety of reasons pertaining to its business judgment, from time to time
25 throughout the duration of this case, PG&E determined not to engage, or not to request
26 services from, Special Counsel whose employment had been authorized (but not required) by
27 the Order Approving Employment and the Supplemental Employment Orders.

28 ⁵Because the Special Counsel Declarations are so numerous, and are, in the aggregate,
voluminous, PG&E has filed these declarations under a form of "Submission of Declarations
of Special Counsel in Support of Final Application for Compensation," which indexes the
Special Counsel Declarations alphabetically, by name of firm.

1 their fees or expenses and (f) the amount which Special Counsel believes it has been paid
2 during for service rendered during the Compensation Period.⁶

3 The information set forth in the Index of Special Counsel and the Declarations of
4 Special Counsel is subject to two clarifications. First, the amounts set forth in the Index of
5 Special Counsel and the Declarations of Special Counsel do not include amounts which
6 pertain to services rendered during the last stages of the Compensation Periods, and which
7 have not been paid as of the date of filing this Application. These fees and expenses remain
8 unpaid either because they are required to be reviewed by the UST and the Committee per
9 the terms of the Order Approving Employment, and the review period has not yet expired⁷,
10 or because the payment has simply not been processed by PG&E. Attached as Exhibit "B"
11 hereto is a "Schedule of Payments to Be Made" which lists, to the best of PG&E's current
12 knowledge, the Special Counsel with outstanding invoices and the amount of such invoices.
13 PG&E expects that these amounts will be paid in the ordinary course, prior to the hearing on
14 this Application.

15 Second, although PG&E and Special Counsel have made diligent efforts to
16 reconcile the amounts which the Special Counsel believe they have been paid during the
17 Compensation Period with the amounts which PG&E believes it has paid during that period,
18 inevitably, with the number of firms involved and the irregular commencement and cut-off
19 dates of the Compensation Period, some discrepancies exist. Many of these discrepancies
20 are quite small, and, in light of the total amounts paid to the subject firm, are de minimus in
21 amount. Given the fact that all Allowed Claims are being paid in full in this case (with
22 interest), and considering the likely cost of the effort required to reconcile small

23
24 ⁶Consistent with the provisions of and the rationale underlying the Order Approving
25 Employment, the Special Counsel Declarations do not include Special Counsels' invoices,
26 nor does PG&E propose to file Special Counsels' invoices with the Court. Of course, if the
27 Court or the UST desires to review any invoice(s), PG&E and Special Counsel will make any
28 such requested invoices available to the Court or the UST.

⁷True and correct copies of the cover letters from Richard Meiss, in-house counsel to
PG&E, dated June 23, June 29, and June 30, 2004, transmitting invoices to the UST and
Committee, are attached as Exhibits "R" and "S" to the Lafferty Declaration.

1 discrepancies, PG&E has determined not to pursue any discrepancy less than either
2 approximately one percent (1%) of the total amount billed by the special counsel or \$1000.
3 PG&E is working to reconcile the other discrepancies, and hopes to have such reconciliation
4 complete prior to the date on which Notice of Hearing of this Application is sent to creditors
5 and interested parties. PG&E will file a Supplement to this Application describing the
6 resolution of any such discrepancies.

7
8 CONCLUSION

9 Special Counsel rendered valuable non-bankruptcy services to PG&E during the
10 course of this case. Without these non-bankruptcy services, PG&E would not have been able
11 to operate its business and to fulfill its duties as a utility responsible for providing gas and
12 electric services to approximately 4.5 Million customers throughout Northern California.

13 WHEREFORE, PG&E prays that this Court approve the payment of
14 compensation and reimbursement of expenses to Special Counsel, as set forth herein, and as
15 reflected on Exhibits "A" and "B" to this Application, pursuant to Section 330 of the
16 Bankruptcy Code.

17 DATED: July 9, 2004

18 Respectfully,

19 JAMES L. LOPES
20 JEFFREY L. SCHAFFER
21 JANET A. NEXON
22 WILLIAM J. LAFFERTY
23 HOWARD, RICE, NEMEROVSKI, CANADY,
24 FALK & RABKIN
25 A Professional Corporation

26 By: 

27 WILLIAM J. LAFFERTY

28 Attorneys for Reorganized Debtor and Debtor in
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COMPANY

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