

50-275/323

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PACIFIC GAS AND ELECTRIC COMPANY

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re

PACIFIC GAS AND ELECTRIC
COMPANY, a California corporation,

Debtor.

Federal I.D. No. 94-0742640

No. 01-30923 DM

Chapter 11 Case

Date: December 3, 2001

Time: 1:30 p.m.

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

DECLARATION OF TAMMIE CANDELARIO IN SUPPORT OF
APPLICATION FOR AUTHORITY TO EMPLOY REAL ESTATE
APPRAISERS AND BROKERS, FOR APPROVAL OF PAYMENTS TO
APPRAISERS AND BROKERS WITHIN SPECIFIED PARAMETERS,
AND FOR NUNC PRO TUNC APPROVAL FOR EMPLOYMENT OF
TERRA PROPERTIES

A001 Add: Kids Ogc Mail Center

CANDELARIO DECL. RE APPLIC. FOR AUTHORITY TO EMPLOY APPRAISERS AND BROKERS

HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN
A Professional Corporation

1 I, Tammie Candelario, declare as follows:

2 1. I am the Director of Building and Land Services of Pacific Gas and Electric
3 Company ("PG&E"), a position I have held since May 2000. I am responsible for, among
4 other things, overseeing the sale, lease and appraisal of PG&E's real estate assets along with
5 real estate strategy and planning. I make this declaration in support of the Debtor's
6 Application for Authority to Employ Real Estate Appraisers and Brokers (the
7 "Application"). This Declaration is based on my personal knowledge, except where
8 indicated otherwise. If called as a witness, I could and would testify competently to the facts
9 stated herein.

10 2. PG&E owns approximately 5,000 parcels of real estate and, as a tenant,
11 leases space in approximately 240 buildings in addition to a number of land leases.
12 Therefore, in the ordinary course of its business, PG&E regularly employs real estate
13 appraisers and brokers to assist PG&E on real estate matters, including: (1) leasing
14 transactions, (2) the purchase and sale of real estate, and (3) real estate strategy and
15 planning.

16 3. PG&E seeks authority to employ each of the appraisers listed on Exhibit A
17 attached hereto (the "Appraisers"). Exhibit A includes a summary of the terms of each
18 appraiser's contract with PG&E, including the date of the contract, the hourly rates for
19 appraisal services and a maximum contract value.

20 4. PG&E seeks authority to employ each of the brokers listed on Exhibit B
21 attached hereto (the "Brokers"). Exhibit B-1 includes all of the brokers who may perform
22 consulting services in addition to brokerage services, and includes a summary of the terms of
23 each broker's contract with PG&E, including the date of the contract, the hourly rates for
24 consulting services and a maximum contract value. Exhibit B-2 includes the names and
25 addresses of the brokers who may perform brokerage services for PG&E but who will not
26 perform any consulting services.

27 5. PG&E is readily familiar with the professional capabilities of each of the
28 Appraisers and Brokers and believes that each is well-qualified to assist PG&E in

1 connection with ongoing real estate matters.
2 6. PG&E has existing contracts with each of the Appraisers. The standard
3 form of contract utilized for retention of appraisers is attached hereto as Exhibit C (the
4 "Appraiser Contract"). The purpose of the Appraiser Contract is to specify the general terms
5 and conditions under which PG&E will hire an appraiser and to set limits on the appraiser's
6 fee, such as the hourly rate and a maximum contract value. When a particular project
7 necessitates employment of an appraiser, a Contract Work Authorization ("CWA") is signed
8 by the parties, authorizing the work and agreeing to the specific fee to be paid for that
9 project, subject to the general terms and conditions of the Appraiser Contract. The
10 Appraiser Contract attached as Exhibit C is a copy of the contract between PG&E and Diaz,
11 Diaz and Boyd, Inc. This contract is representative of the terms and conditions of all of the
12 Appraisers' contracts and is submitted as an example in lieu of submitting each of the
13 contracts. The primary difference between the various Appraiser Contracts consists of the
14 hourly rates and maximum values, which information is summarized on Exhibit A. PG&E
15 has not actually employed any of the Appraisers post-petition, except that certain Appraisers
16 have been employed in connection with the acquisition of real property, which I understand
17 is not covered by this Application. Furthermore, there are no outstanding amounts due to
18 any of the Appraisers, except that one of the appraisers, Gary Vice, has waived a pre-petition
19 claim against PG&E in the amount of \$2,400.

20 7. The actual costs to PG&E for an appraisal are generally determined by a
21 number of factors including complexity of the assignment, type of report needed and
22 location of the property. These same factors generally determine which appraiser would be
23 chosen for a particular job. It is also typical for PG&E to request quotes from two or more
24 appraisers, who generally bid for the particular job on a "not to exceed" basis. Because of
25 its extensive experience in managing its real estate portfolio, PG&E has a high level of in-
26 house expertise that permits it to monitor the validity and reasonableness of appraisal fees
27 and costs. In the vast majority of appraisals obtained by PG&E pre-petition, PG&E has paid
28 no more than \$10,000 per appraisal, which includes both the fee for conducting the appraisal

1 and any related costs incurred by the appraiser.

2 8. PG&E also seeks to employ appraisers to conduct valuation consulting
3 services, such as determining the highest and best use for a parcel of real estate, in situations
4 where an appraisal is not needed. In such cases, the appraiser would be paid on an hourly
5 basis at the agreed upon hourly rate. In connection with appraiser-related consulting
6 services conducted pre-petition, PG&E has paid varying amounts, depending upon its real
7 estate needs at any particular time, ranging up to \$20,000 per year. Currently, PG&E's
8 expectation is that the reorganization effort will require additional valuation consulting
9 services as PG&E focuses on real estate disposition and strategic planning, and PG&E
10 estimates that such services will average \$5,000 per month in hourly consulting fees for the
11 Appraisers.

12 9. As a brief overview of PG&E's handling of real estate acquisitions, in the
13 course of PG&E's business as a government-regulated utility, all real property (or in many
14 cases, easements) to be acquired is treated as a potential condemnation action in light of
15 PG&E's power to condemn property. PG&E is required to hire an appraiser to comply with
16 the procedural requirements of the eminent domain law. Although in many cases PG&E
17 reaches an agreement with a landowner before a condemnation action is actually filed, the
18 appraiser is hired specifically to prepare an appraisal to be used in a condemnation action.

19 10. PG&E has existing contracts with each of the Brokers listed on Exhibit B-1
20 hereto, which includes brokers who may perform consulting services as well as brokerage
21 services (the "Consulting Brokers"). The standard form of contract utilized for retention of
22 the Consulting Brokers is attached hereto as Exhibit D-1 and D-2 (the "Broker Contract").
23 Exhibit D-1 is a copy of the contract between PG&E and Grubb & Ellis and is representative
24 of the general contract form used for the Consulting Brokers who have pre-petition
25 contracts, specifically: (1) Grubb & Ellis, (2) Colliers International, (3) Loh Realty, and (4)
26 North Pacific Coast Company. Exhibit D-2 is a copy of the contract between PG&E and
27 CM Realty and is representative of the general contract form used for the Consulting
28 Brokers who have recently executed a post-petition contract with PG&E, specifically: (1)

1 CM Realty, (2) BT Commercial, and (3) Belvedere Associates. The principal difference
2 between these two contract forms is that the pre-petition Broker Contract included the terms
3 of PG&E's exclusive listing agreement (discussed in Paragraph 12 below), while the post-
4 petition Broker Contract does not.

5 11. As with the Appraiser Contract, the purpose of the Broker Contract is to
6 specify the general terms and conditions under which PG&E will hire a broker and to set
7 limits on the broker's fee, such as the hourly rate and a maximum contract value. When a
8 particular project necessitates employment of a broker, a CWA is signed by the parties,
9 authorizing the work and agreeing to the fee to be paid for that project, subject to the general
10 terms and conditions of the Broker Contract. Exhibit B-1 includes a summary of the terms
11 and conditions in the various Broker Contracts that are variable, primarily the different
12 hourly rates charged by each Broker. Although the Consulting Brokers have existing Broker
13 Contracts in place, PG&E has not actually employed any of the Consulting Brokers post-
14 petition and there are no outstanding amounts due to any of the Consulting Brokers.

15 12. PG&E also seeks to employ certain Brokers solely for purposes of an
16 exclusive listing to sell property. These Brokers are identified on Exhibit B-2 ("Listing
17 Brokers") and are not expected to perform any consulting services. Therefore, the Broker
18 Contract summarized above is not necessary for the Listing Brokers. The form of Exclusive
19 Listing Agreement to be used by PG&E for the Listing Brokers is attached hereto as
20 Exhibit E. The Exclusive Listing Agreement would also be used for the Consulting Brokers
21 in the event they perform brokerage services.

22 13. Historically, the commission paid by PG&E for the sale of property is
23 negotiable based on the amount of time and expertise required to complete the assignment
24 and is calculated as a percentage of the sale price. Commissions paid by PG&E for pre-
25 petition sale transactions ranged from 3% to 10%, with the vast majority in the 4% to 6%
26 range. A 10% commission has typically been paid only for low value (\$50,000 or less) rural
27 property. In most other transactions, the highest commission PG&E has paid is 6%. PG&E
28 anticipates that most of its real estate transactions will consist of property sales. In the event

1 of a purchase, however, PG&E typically pays no broker's fee but may pay a broker for
2 hourly consulting services in connection with the transaction. Similarly, in lease
3 transactions, PG&E is typically the lessee and does not pay a broker's commission but may
4 pay a broker for hourly consulting services in connection with the transaction.

5 14. PG&E also seeks authority for employment of the Consulting Brokers for
6 consulting services, such as when PG&E seeks market research in connection with real
7 estate strategy and planning or where PG&E will not be paying a commission but seeks
8 advice from a broker in connection with a transaction. In such cases, the broker would be
9 paid on an hourly basis at the agreed upon hourly rate. In connection with broker-related
10 consulting services conducted pre-petition, PG&E has paid varying amounts, depending
11 upon its real estate needs at any particular time, ranging up to \$50,000 per year. Currently,
12 PG&E's expectation is that the reorganization effort will require additional broker
13 consulting services as PG&E focuses on real estate disposition and strategic planning, and
14 PG&E estimates that such services will average \$15,000 per month in hourly consulting fees
15 for the Consulting Brokers.

16 15. The only Listing Broker currently under contract with PG&E is Terra
17 Properties, which has two pre-petition exclusive listing agreements with PG&E: (a) The first
18 listing agreement was entered into on January 14, 2000, as currently extended to December
19 31, 2001, and involves property located in Redding, California on Court Street (the "Court
20 Street Property"). This property consists of 4.3 acres of vacant property with improvements
21 that require replacement and is to be sold for approximately \$700,000. No buyer was found
22 for this property pre-petition. In August 2001, a potential buyer began negotiations to
23 purchase the property but no final agreement has been reached; (b) the second listing
24 agreement was entered into on January 24, 2001, with an expiration date of December 31,
25 2001, and involves property located in Redding, California on Viking Way (the "Viking
26 Way Property"). This property consists of 30 acres of vacant land to be sold for
27 approximately \$180,000. No buyer was found for this property pre-petition, nor are there
28 any offers pending.

16. PG&E did not notify Terra of the requirement to be employed in the bankruptcy case before this Application was prepared as it mistakenly believed that only brokers doing work prospectively required Court approval. PG&E was focused on the fact that new (post-petition) employment agreements required Court approval and therefore overlooked Terra's unique position. Terra was the only broker who "straddled" the petition date, by continuing to provide services under the pre-petition listing agreements since no buyers had been found for the Court Street and Viking Way Properties as of the petition date. Part of the confusion arose because there are other PG&E brokers with pre-petition exclusive listing agreements who are not being employed as estate professionals, based on the advice of counsel that this latter group of brokers is not "disinterested" under bankruptcy law. For all of these reasons, the necessity of obtaining approval for Terra's services was overlooked.

17. I believe that Terra's post-petition services have benefited the estate by continuing to expose these difficult-to-sell properties to the market. Although there is no sale agreement at this time, there is a potential buyer on the Court Street Property. Both the Court Street and the Viking Way Properties require substantial and prolonged marketing efforts due to their isolated locations and local market conditions. At this time, Terra is not owed any commissions and PG&E has not decided whether to extend the listing agreements, both of which expire on December 31, 2001.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct and that this Declaration is executed this 6th day of November, 2001, at San Francisco, California.


TAMMIE CANDELARIO

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