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50-275/323

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

12 In re

13 PACIFIC GAS AND ELECTRIC
14 COMPANY, a California corporation,

15 Debtor.

Case No. SF 01-30923 DM

Chapter 11

**SECOND INTERIM APPLICATION OF
MILBANK, TWEED, HADLEY & McCLOY
LLP FOR ALLOWANCE AND PAYMENT
OF COMPENSATION AND
REIMBURSEMENT OF EXPENSES
(AUGUST 1, 2001 THROUGH NOVEMBER
30, 2001)**

Hearing:

Date: February 26, 2002

Time: 9:30 a.m.

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

A001 Add: Rids Oge Mail Center

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1 **TO THE HONORABLE DENNIS MONTALI, UNITED STATES BANKRUPTCY**
2 **JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, THE DEBTOR, AND**
3 **OTHER PARTIES IN INTEREST:**

4 Milbank, Tweed, Hadley & McCloy LLP ("Milbank"), counsel to the Official
5 Committee of Unsecured Creditors (the "Committee") appointed in the above-captioned chapter
6 11 case (the "Case") of Pacific Gas and Electric Company, Debtor and Debtor in Possession
7 ("PG&E" or the "Debtor"), hereby submits its second interim application for allowance and
8 payment of compensation and reimbursement of costs and expenses (the "Second Interim
9 Application") covering the four-month period from August 1, 2001 through and including
10 November 30, 2001 (the "Second Application Period"). In support of the Second Interim
11 Application, Milbank respectfully represents as follows:

12 **I.**

13 **INTRODUCTION**

14 This is Milbank's Second Interim Application for approval of compensation and
15 reimbursement of expenses for services rendered on behalf of the Committee in connection with
16 the Case. Milbank submits this Second Interim Application in accordance with Bankruptcy
17 Code sections 330 and 331, Rule 2016 of the Federal Rules of Bankruptcy Procedure (the
18 "Bankruptcy Rules"), the Office of the United States Trustee for the Northern District of
19 California Guidelines (the "UST Guidelines"), and the United States Bankruptcy Court Northern
20 District of California Guidelines for Compensation and Expense Reimbursement of Professionals
21 and Trustees (the "Court Guidelines").

22 Pursuant to this Second Interim Application, Milbank seeks interim approval and
23 allowance of \$1,690,874.00 in fees accrued for services rendered in connection with the Case by
24 Milbank professionals who recorded a total of 3,973.85 hours on behalf of the Committee during
25 the Second Application Period. Milbank also seeks interim approval and allowance of
26 \$116,651.11 in costs and expenses incurred by Milbank on behalf of the Committee during that
27

1 same period. Accordingly, pursuant to this Second Interim Application, Milbank seeks
2 allowance of a total of \$1,807,525.11 for services rendered and reimbursement of costs and
3 expenses incurred. Milbank's Second Interim Application reflects voluntary reductions in fees
4 and costs totaling \$102,420.57, as described in greater detail below. Milbank to date has
5 received payment of fees in the amount of \$1,122,499.17 and reimbursement of expenses in the
6 amount of \$99,153.57 on account of the Monthly Cover Sheet Applications covering the Second
7 Application Period, leaving a balance due of \$585,872.37.¹ The services performed and costs
8 and expenses incurred during the Second Application Period are summarized in Sections III and
9 IV, respectively, below, and are detailed in the exhibits filed concurrently herewith.

10 II.

11 BACKGROUND

12 A. Background Facts.

13 PG&E commenced the Case with the filing of a voluntarily petition under chapter
14 11 of the Bankruptcy Code on April 6, 2001 (the "Petition Date"), thereby precipitating what has
15 been characterized as among the three largest, and certainly one of the most complex, bankruptcy
16 cases in United States history. At the time of the filing, the State of California was deep in the
17 throes of an energy crisis that threatened the solvency and very viability of PG&E, as well as the
18 financial health and well-being of the State of California and its residents. PG&E had been
19 purchasing power to meet a significant portion of its load, the "net short" position, through the
20 California Power Exchange at spot prices that had escalated wildly over the prior year.
21 Moreover, California was experiencing a shortfall in generation capacity available to investor
22 owned utilities such as PG&E, exacerbated by drought conditions in the Pacific Northwest that
23 had reduced the supply of imported hydroelectric power and rising natural gas prices that had put
24

25
26 ¹ \$386,791.73 of this balance will be paid on or about January 15, 2002, provided that there are
27 no objections to Milbank's Cover Sheet Application covering the period of November 1, 2001
28 through November 30, 2001.

1 severe pressure on wholesale electric prices and given rise to the loss of some generation
2 capacity of certain Qualifying Facilities ("QFs") that were experiencing economic hardship.
3 Indeed, PG&E had only made partial payment to such QFs for contractual obligations that had
4 arisen during the months prior to the Petition Date.

5
6 As a regulated utility subject to a disputed rate freeze pursuant to AB 1890,
7 PG&E's revenues from retail power sales had been subject to a rate cap that for some time had
8 left PG&E in a position where it was not able to cover its operating costs. Literally billions of
9 dollars of equity value had eroded. As PG&E's credit ratings tumbled, PG&E found itself
10 unable to purchase the power needed to cover its net short position through the California Power
11 Exchange and in jeopardy of being able to fulfill its statutory duty to serve the public. In the
12 midst of this crisis, the Governor of the State of California had issued an emergency order and
13 legislation was enacted that put the California Department of Water Resources (the "CDWR")
14 into the business of purchasing power to cover PG&E's net short position, with resulting
15 uncertainties as to the implications on PG&E and California ratepayers.

16 Negotiations with the Governor to address the problem through a legislative fix
17 were frustrated by the complications of competing federal and state regulatory interests, the
18 tremendous size of the economic problem, the failure of California's deregulated electric power
19 market and the California Power Exchange, and the inability to control unpredictable future
20 wholesale electricity and natural gas prices. Failing to reach what it perceived to be an
21 acceptable legislative solution, PG&E commenced the Case.

22 Recognizing the enormous complexity of the problem, the compelling public
23 interest in finding a resolution that would not jeopardize PG&E's ability to continue to serve its
24 4.5 million customers in Northern California, and the need to address satisfaction of over \$13
25 billion in pre-petition debt owed to, among others, financial institutions that had provided the
26 financing for PG&E's infrastructure and operations, power generators and marketers that had
27 supplied electric energy and natural gas to PG&E, and in excess of 30,000 trade creditors, the
28

1 Office of the United States Trustee ("U.S. Trustee") acted quickly to appoint an official
2 committee of unsecured creditors in the Case. The Committee was formed on April 10, 2001,
3 and just six days later the Committee selected Milbank to act as its counsel after interviewing
4 several potential law firms.

5
6 **B. Milbank's Role In The Case.**

7 Milbank, on behalf of the Committee, and in conjunction with other advisors
8 employed by the Committee, immediately turned to the task of developing an understanding of
9 the Debtor's operations, its financial condition, its assets and liabilities, pending litigation, and
10 the complex regulatory framework that governs the Debtor. Milbank also was called upon to
11 develop the internal framework for governance of the Committee, the mechanisms for effective
12 and timely communication with the Debtor, the review of and response to the myriad of
13 contested and administrative matters that needed to be addressed in connection with the
14 administration of the Case and PG&E's estate, and the monitoring of actions by and proceedings
15 before the Federal Energy Regulatory Commission (the "FERC"), the California Public Utilities
16 Commission (the "CPUC"), the California Energy Commission (the "CEC"), the CDWR, the
17 California Legislature, the U.S. Congress, and the offices of the Governor, the Attorney General,
18 the Treasurer, and other representatives of the State of California.

19 At the outset of the case, Milbank, in conjunction with the Committee's advisors,
20 developed a comprehensive list of issues that needed to be analyzed and addressed and provided
21 the framework for Milbank's focus during the First Interim Period and much of the Second
22 Interim Period. Among the areas of focus were: (a) issues relating to the formulation of a
23 confirmable and feasible plan of reorganization in the context of an extremely complex federal
24 and state regulatory environment, the sensitive political environment, the corollary problems
25 being experienced by other investor owned utilities in the state, the dearth of historical or case
26 law precedent governing regulated utility reorganization, and the inherent economic problems
27 and uncertainties; (b) issues relating to PG&E's revenues as recovered through its retail rates,
28

1 specifically including issues relating to the California Procurement Adjustment under AB 1X,
2 rates issues with respect to recovery of energy procurement costs by the CDWR, and analysis of
3 procedural and substantive aspects of PG&E's filed rate case; (c) issues with respect to
4 identification and valuation of assets of the Debtor, including operational asset rationalization,
5 implications of federal and state regulatory provisions and applicable bankruptcy law on PG&E's
6 generation, transmission and distribution assets, valuation and recovery of the Debtor's claims
7 arising from the State's commandeering of PG&E's positions with the California Power
8 Exchange in the block-forward market, tax considerations, and analysis of related party
9 transactions; (d) issues relating to PG&E's liabilities, including treatment of the net short
10 position, treatment of the power purchase agreements between PG&E and the QFs, and the status
11 of PG&E's secured financings; and (e) issues with respect to PG&E's interactions with the State
12 of California and the California Legislature, including the implications for PG&E of the
13 legislative response to the Memorandum of Understanding (the "MOU") among Southern
14 California Edison Company ("Edison"), Edison International and the CDWR executed just three
15 days following the Petition Date and, ultimately, the settlement structure adopted by the CPUC
16 in resolving Edison's "Filed Rate Case." Against this backdrop, Milbank has worked with
17 PG&E, PG&E Corp. (the "Parent"), Committee members and the other Committee professionals
18 toward the formulation of a Plan that would pay creditors in full with interest.

19
20 Milbank and the Committee have participated actively in all aspects of the Case
21 since its formation. The Committee has developed a positive working relationship with PG&E
22 and its various professionals. Milbank and counsel for PG&E consult on a daily basis regarding
23 various operational, strategic, and litigation issues that arise in the Case and in related fora.
24 Pursuant to the Committee's request and the consent of the Debtor, the Committee frequently is
25 given an opportunity to review and comment on draft pleadings, address Committee concerns
26 with respect to underlying business decisions, and negotiate with PG&E with respect to its
27 position and its proposals to address Committee concerns, where appropriate. This approach has
28 expedited the Debtor's reorganization efforts, reduced professional fees and other administrative

1 expenses that would arise in the context of a less constructive relationship, and reduced, and in
2 some cases eliminated, unnecessary litigation.

3
4 The efforts of Milbank and the Committee and its other professionals have
5 contributed towards the stabilization of PG&E's operations and the resolution or elimination of
6 significant litigation. Milbank and the Committee's other professionals have developed
7 economic and settlement models and, participating in advocacy and mediation roles, helped to
8 give direction to resolution of thorny issues. The constructive efforts of Milbank, as counsel to
9 the Committee, have contributed to the speed and relative calm with which numerous potentially
10 highly combustible issues have been resolved. Indeed, only five months into the case, the Debtor
11 has filed a Plan supported by the Committee that proposes to pay creditors in full with interest.

12 **C. Committee Structure and Milbank's Internal Staffing.**

13
14 Milbank was selected as counsel to the Committee not only because of its
15 expertise and experience in connection with complex bankruptcies and financial reorganizations,
16 particularly those involving significant regulatory and public financing aspects, but also by
17 reason of its expertise and depth of resources in the utility, power and energy, project finance,
18 banking and institutional investment, capital markets, securitization, taxation and litigation
19 practice areas. Because of the breadth and depth of Milbank's experience, the Committee has
20 been able to look to one law firm, Milbank, to provide it with advice, counseling and
21 representation in the wide range of areas of expertise that have been required. Conversely, given
22 the demands of the Case, PG&E naturally has had to turn to a number of law firms, including
23 those with which it had pre-Petition Date relationships, to provide the wide array of services
24 required. Additionally, the Parent, as the sole shareholder of the Debtor and as a co-proponent of
25 the Plan of Reorganization filed on September 20, 2001 (as amended, the "Plan"), has played a
26 significant role in the Case and devoted substantial resources, both internally and in the form of
27 numerous outside legal and financial advisors, to assist PG&E in connection with the Case. As
28 the Committee's sole law firm, Milbank has been able, and required, to interact on an extensive

1 basis with the numerous law firms employed by PG&E and its Parent in connection with this
2 engagement. Milbank's capacity has had the benefit of providing great efficiency and savings to
3 its client, the Committee, and to the estate generally.

4 The Committee is composed of eleven (11) individual members. In order to more
5 efficiently fulfill its fiduciary duties and facilitate its functions, the Committee established the
6 following working groups: the Litigation Subcommittee; the Finance Subcommittee; the
7 Legislative and Regulatory Subcommittee; and the Plan Working Group. Milbank has provided
8 counsel to each of the Subcommittees and the Plan Working Group through attorneys with
9 expertise and knowledge most pertinent to each working group's designated areas of
10 responsibility and the reports and action items that are agendaized for their meetings. The
11 Subcommittees and Plan Working Group typically reported on their activities to the full
12 Committee at periodic meetings held by telephone conference call or in person in San Francisco,
13 frequently in conjunction with direct in-person meetings with PG&E's senior management.
14 Milbank believes that through its internal division of responsibility and the Subcommittee
15 structure, the Committee, and the estate, have received the benefit of efficient and effective
16 delivery of legal services.

17
18 Given the broad range of responsibilities and intense time pressures imposed on
19 Milbank at the outset of the Case, Milbank determined to staff the matter in a manner that would
20 maximize its efficiency. For this reason, financial restructuring partner Paul Aronzon assumed
21 primary responsibility for intra-Committee communications and coordination of the Plan
22 negotiations process with the Committee's financial advisors and PG&E, its Parent and their
23 respective legal and financial advisors. Financial restructuring partner Robert Moore focused on
24 the Bankruptcy Court pleading and appearance process, including Disclosure Statement and Plan
25 confirmation issues, and spearheaded the interface with PG&E and its counsel regarding the
26 settlement dialogue process with respect to contested matters. Energy regulatory partner Ed Feo
27 has focused on analysis of FERC and CPUC proceedings and the California legislative process

1 as they relate to PG&E's operations, strategies, Plan formulation, and more recently, Plan
2 implementation. Energy finance partner Allan Marks has focused on analysis of PG&E's
3 financing structures, and more recently PG&E's exit financing as proposed under the Plan.
4 Litigation partner Michael Diamond assumed primary responsibility for Milbank's participation
5 in adversary proceedings and non-bankruptcy court litigation matters. Within this framework,
6 Milbank attempted to minimize its charges by, among other things, (a) attending Bankruptcy
7 Court hearings by telephone conference call, when appropriate, (b) monitoring proceedings
8 before the FERC, the CPUC, the California Legislature, the United States Congress, and other
9 tribunals or other agencies only when necessary to fulfill its duties and, when possible and
10 appropriate, via the Internet, and (c) generally having only those attorneys primarily responsible
11 for particular matters attend hearings or other proceedings.

12
13 Because the Committee has been able to rely on Milbank's breadth of expertise in
14 lieu of employing multiple law firms with different skill sets, more than one Milbank partner has
15 attended certain Committee, Subcommittee, Working Group or other meetings, as well as a small
16 number of hearings, where that partner's expertise or knowledge base provided an important
17 underpinning to the negotiation, deliberation, or advocacy process:

18 **D. Summary of Milbank's Billing Procedures.**

19
20 In the ordinary course of its practice, Milbank maintains records of time expended
21 by attorneys, law clerks, legal assistants, and case clerks in rendering services to its clients,
22 including the Committee. Time records are made substantially contemporaneously with the
23 rendition of these professional services and are prepared by the attorneys, law clerks, legal
24 assistants, and case clerks who have rendered the services. Milbank attempts to minimize its
25 charges by generally having only those attorneys primarily responsible for particular matters
26 attend hearings or participate in Subcommittee or Plan Working Group meetings and conference
27 calls. In matters such as this representation, time records are kept in six minute (.1 hour)
28 increments. With regard to intra-office conferences, at times no attorney, or a single attorney,

1 may bill for the conference. It is impossible to state with precision how much time has not been
2 recorded by Milbank's professionals as a result of this practice.

3
4 In view of the implications for the citizens of California of the California energy
5 crisis in general and the Case in particular, at the outset of this engagement, and without request
6 or demand by any party, Milbank voluntarily elected to reduce the hourly rates of its most senior
7 attorneys to \$595, a reduction of up to \$80 per hour from the rates normally charged by these
8 attorneys. That reduction has been in place throughout the First and Second Interim Periods. In
9 reviewing its monthly pre-bills before submission to the U.S. Trustee and PG&E, Milbank
10 further voluntarily elected not to bill for certain time recorded by various attorneys, law clerks,
11 paralegals, legal assistants and case clerks relating, among other things, to duplicative attendance
12 at hearings, certain monitoring of regulatory hearings and proceedings, document retrieval and
13 file organization. These rate and billing reductions during the Second Application Period total
14 \$72,615.00. Additionally, Milbank has carefully reviewed the Court's Memorandum Decision
15 Regarding Applications for Interim Applications for Professionals filed December 12, 2001
16 ("Memorandum Decision") and has made adjustments in accordance with the Memorandum
17 Decision. Consistent with the Memorandum Decision, Milbank has reduced the charges billed
18 for the PG&E Case Clerk from \$100 per hour to \$40 per hour, which is reflected in this Second
19 Interim Application as a reduction of \$18,366.00 in fees that normally would have been billed to
20 the client. Moreover, Milbank wrote off 101.30 hours that it spent supplementing its First
21 Interim Fee Application, which reduced fees by an additional \$49,973.50.² Also, consistent with
22 the Memorandum Decision, Milbank has written off 23.10 hours for non-working travel totaling
23 \$11,452.50. Finally, in order to comply with the UST Guidelines and the Court Guidelines,
24 Milbank either has not sought or has reduced its request for reimbursement of expenses in the
25 total amount of \$29,805.57. Accordingly, during the Second Application Period Milbank has

26 ² As fully set forth in Section III(C)(6) below, Milbank requests that the Court revisit this issue at
27 the hearing on the Second Interim Application to consider allowance of a portion of Milbank's
28 fees incurred in responding to the U.S. Trustee's objections to the First Interim Fee Application.

1 reduced the fees and costs it normally would charge its clients by \$182,212.57, approximately
2 10% of the fees and costs requested.

3 4 III.

5 SUMMARY OF SERVICES RENDERED BY MILBANK DURING 6 THE SECOND APPLICATION PERIOD

7 A. Overview.

8
9 Milbank's work during the Second Application Period focused heavily on Plan
10 and Disclosure Statement formulation and revision, and Plan implementation analysis. During
11 the months of August and September 2001, Milbank and the Committee's other professionals
12 devoted substantial resources to the formulation of, and negotiations with the Debtor and the
13 Parent (collectively, the "Proponents") regarding, the key economic terms of the Plan. On the
14 eve of the Proponents' filing of the Plan, these key economic terms became the subject of a Term
15 Sheet that provided the basis for a Plan Support Agreement entered into by the Committee, the
16 Debtor, and the Parent on September 20, 2001 (the "Support Agreement"). The Plan Support
17 Agreement establishes the parameters of the Committee's support for the Plan. Milbank played
18 an integral role in formulating the key economic terms of the Plan and drafting the Support
19 Agreement. The Support Agreement Term Sheet reflects economic terms substantially more
20 favorable to creditors than those originally offered by the Proponents.

21 After the Plan was filed on September 20, 2001, Milbank concentrated its efforts
22 on negotiating the Plan provisions that were not addressed by the Support Agreement. Various
23 creditor constituencies objected to the Plan on a number of different grounds. For example, LC
24 Pollution Control Bond Banks ("LC Banks"), certain Commercial Paper and Floating Rate Note
25 holders and QFs all objected to the interest rate proposed by the Plan. Milbank analyzed the
26 legal standards with regard to payment of interest rates by a solvent debtor, advised the
27 Committee regarding interest rate issues, and facilitated the negotiations between the objecting
28

1 creditor groups and the Proponents. Milbank's analysis of the interest rate issues and
2 involvement in the negotiation process aided in the formulation of settlements between the
3 Proponents and the LC Banks and the QFs, respectively. Milbank believes that a settlement now
4 has been reached among the Proponents and the holders of Commercial Paper and Floating Rate
5 Notes that will result in further amendments to the Plan. Likewise, Milbank has worked steadily
6 to resolve the disputes between the Proponents and the various municipalities. Milbank has also
7 worked, and is continuing to work, with the other creditor constituencies to attempt to resolve all
8 remaining issues with regard to the Plan and anticipates that the Plan will be amended to reflect
9 substantial additional improvements in terms of the treatment of unsecured creditors generally.

10
11 Milbank has also continued to analyze the feasibility and implementation aspects
12 of the Plan. In particular, Milbank has extensively researched the preemption and sovereign
13 immunity issues raised by the Plan. Milbank has also analyzed the procedural mechanisms by
14 which the Plan may be confirmed. Indeed, Milbank prepared a brief arguing that the preemptive
15 relief sought by the Plan can be obtained through a confirmation process, rather than through
16 multiple individual adversary proceedings. The Court agreed with this position. Milbank's
17 regulatory team also has continued to analyze the regulatory aspects of the Plan as they relate to
18 Plan feasibility and implementation.

19 Milbank also has negotiated with the Proponents to ensure that the Disclosure
20 Statement contains adequate disclosure to creditors. Indeed, Milbank prepared and filed
21 Comments to the Disclosure Statement suggesting areas of additional disclosure, and has worked
22 with the Proponents to address its concerns. Milbank also analyzed and summarized for the
23 Committee approximately seventy (70) objections filed by creditors in connection with the
24 Disclosure Statement and has worked with the Proponents and the objecting creditors in an effort
25 to resolve these objections.

26
27 In addition to Plan and Disclosure Statement work, Milbank continued to track,
28 analyze and respond to the various pleadings filed in the Case. Milbank has worked directly

1 with counsel for PG&E to review and in many instances negotiate terms of pleadings and
2 stipulations prior to their filing with the Court.

3
4 Milbank also has continued to monitor and analyze the various regulatory
5 proceedings before the FERC and the CPUC, as well as the settlement between the CPUC and
6 Edison. Milbank's regulatory work for this period was related primarily to Plan feasibility and
7 implementation issues. As is now well documented, PG&E's bankruptcy was precipitated by
8 one of the largest regulatory failures in United States history. The process of seeking to remedy
9 this regulatory failure and restore the health of PG&E and California's other electric utilities is
10 dependent substantially on the outcome of federal and state regulatory proceedings and
11 legislative activities. In addition, an analysis of regulatory and legislative matters was critical in
12 the development of the Proponents' Plan, while implementation and consummation of the Plan
13 will require approvals from the FERC, the NRC, and the SEC. Because numerous regulatory
14 and legislative matters are directly relevant to PG&E's bankruptcy, including the Plan, and
15 because Milbank has committed in the Support Agreement to support obtaining the regulatory
16 approvals necessary to achieve confirmation and implementation of the Plan, Milbank has
17 continued to dedicate significant time to researching, analyzing, monitoring and advising the
18 Committee on these matters.

19 During the Second Application Period, Milbank represented and advised the
20 Committee with respect to a wide range of issues and challenges. Due to the comprehensive
21 nature of the services rendered by Milbank during the Second Application Period, no attempt is
22 made herein to detail the totality of such services. The full scope of the services rendered by
23 Milbank is set forth in detail in the billing reports filed concurrently herewith under the caption
24 entitled "Milbank, Tweed, Hadley & McCloy LLP's Time Records Exhibit for the Period August
25 1, 2001 to November 30, 2001" (the "Billing Reports"). However, in order to assist the Court,
26 the United States Trustee, PG&E and other parties in interest in reviewing this Second Interim
27 Application, a brief summary of Milbank's billing procedures and the services rendered by
28

1 Milbank during the Second Application Period with regard to each activity code category,
2 including certain undertakings within each category, is set forth below.

3
4 **B. Summary Of Exhibits Regarding Services Rendered By Milbank.**

5 Attached as Exhibit "1" to the Declaration of Robert Jay Moore filed concurrently
6 herewith (the "Moore Declaration") is a summary of the total hours expended and total fees
7 incurred by each Milbank professional, as well as a categorical summary of expenses incurred,
8 during the Second Application Period.³

9
10 Pursuant to its normal practice when representing committees, Milbank has
11 broken down its services rendered into separate and distinct activity code categories. A
12 summary of each category of services, setting forth the name of each professional who expended
13 time in that category and the total hours and amount billed by each professional in that category
14 during the Second Application Period, is attached to the Moore Declaration as Exhibit "2." In
15 order to more accurately identify services rendered to the regulatory and legislative arenas,
16 Milbank has recategorized certain of the services reflected in its Monthly Cover Sheet
17 Applications into four new activity codes, as discussed in this Second Interim Application and as
18 broken out in the schedule attached to the Moore Declaration.

19 The detailed Billing Reports for each activity code category are filed concurrently
20 herewith. The Billing Reports set forth a chronological, detailed description of the services
21 rendered by Milbank professionals on behalf of the Committee during the Second Application
22 Period for each of the activity code categories described below.

23
24 A chart listing the hourly billing rates in effect throughout the Second Application
25 Period for Milbank professionals who rendered services to the Committee during the Second
26 Application Period is attached to the Moore Declaration as Exhibit "3." Except as otherwise

27 ³ The regulatory time is further described in the Declaration of Edwin F. Feo filed concurrently
28 herewith.

1 noted, these hourly billing rates are the rates regularly charged to clients of Milbank for similar
2 services rendered during the same time period.

3
4 **C. Narrative Summary Of Services Provided By Milbank.**

5 **1. Asset Analysis and Recovery (Category 01).**

6
7 Milbank continued to investigate the validity of the liens held by PG&E's secured
8 creditors such as banks, bondholders and gas suppliers. In particular, pursuant to the Order
9 Authorizing Use of Mortgage Bondholders' Cash Collateral, the Committee was responsible for
10 evaluating the validity, priority and perfection of the first mortgage bank indebtedness and
11 security and perfection documents. During the Second Application Period, Milbank thus
12 continued its review and analysis of the first mortgage bond documents and other mortgages,
13 indentures and security agreements, supplemental indentures and amendments, UCC and real
14 estate records and public filings to evaluate the scope, creation, validity, and perfection of
15 purported liens in favor of secured creditors of PG&E, and prepared and distributed to
16 Committee members and advisors related memoranda and reports. Milbank has concluded that,
17 based on the information reviewed, the above-referenced liens appear to be valid, and institution
18 of avoidance actions is not warranted.

19 Milbank also conducted preliminary analysis of related party transactions,
20 including transfers to the Debtor's sole shareholder Parent. However, as noted in connection
21 with its First Interim Application, the Committee has refrained at this time from expending
22 further or extensive efforts at the expense of the estate in this regard for the following reasons,
23 among others: (a) multiple investigations of these transactions are being conducted by, among
24 others, the CPUC (though its Order Instituting Investigation dated April 4, 2001), the California
25 Attorney General (who on January 10, 2001, filed on behalf of the State of California a
26 Complaint for Restitution, etc. against the Parent, among others) and the Securities Exchange
27 Commission, and are the subject of matters pending before other agencies and fora; (b) the

1 Debtor has proposed a Plan of Reorganization that proposes to pay all creditors in full with
2 interest; and (c) the Committee will not consent to a release of any party, including without
3 limitation the Parent, in connection with related party transactions unless the Plan goes effective
4 or all creditors are otherwise paid in full with interest. The Committee has reserved all of its
5 rights in connection with related party transactions.

6
7 During the Second Application Period, Milbank professionals spent a total of 146
8 hours rendering services in this category, for which Milbank seeks compensation of \$63,345.50.
9 A summary of the Milbank professionals who rendered services in this category and the
10 corresponding amount of fees requested is included in Exhibit "2." The Billing Report for this
11 category, which sets forth a detailed description of the services rendered, is filed concurrently
12 herewith.

13 **2. Asset Disposition/Executory Contracts (Category 02).**

14 Milbank's work in this category included review, analysis, response where
15 appropriate, and appearance at hearings where appropriate in connection with various executory
16 contract matters, including:

17
18 (a) Various notices of Debtor's intent to assume Power Purchase Agreements
19 ("PPAs") with QFs such as the Oildale group, the Gaylord group, Ripon Cogeneration, and
20 Chevron.

21
22 (b) Motions made by QFs such as the Midset group for adequate protection
23 hardship payments.

24 (c) Debtor's motion to sell the Kern facility.

25 (d) Approval of Debtor's agreement with Modesto.

26
27 (e) Approval of motions related to settlements of state court condemnation

1 and reverse condemnation proceedings involving the Debtor.

2 (f) Debtor's motion to assume the Holtec contract and the nuclear fuel storage
3 system contract.

4
5 (g) Debtor's motions to extend time to assume or reject real property leases.

6 During the Second Application Period, Milbank professionals spent a total of
7 64.40 hours rendering services in this category, for which Milbank seeks compensation of
8 \$32,021.00. A summary of the Milbank professionals who rendered services in this category and
9 the corresponding amount of fees requested is included in Exhibit "2." The Billing Report for
10 this category, which sets forth a detailed description of the services rendered, is filed
11 concurrently herewith.

12
13 **3. Business Operations (Category 03).**

14 Milbank's work in this category included review, analysis, response where
15 appropriate, and appearance at hearings where appropriate in connection with the following:

16
17 (a) Debtor's applications to modify real property leases.

18 (b) Motion to settle certain issues in connection with letter of credit-backed
19 pollution control bonds.

20
21 (c) Debtor's motion to establish omnibus lease and sale procedures.

22 (d) Debtor's motion for authority to obtain a letter of credit in connection with
23 its participation in the Canadian Gas Supply Network.

24
25 Milbank also addressed various aspects of Debtor's business operations, such as:

26 (a) general analysis of preemption issues in light of current utility regulations; (b) review and
27 analysis of financing materials prepared by the Debtor, its professionals and Committee

1 professionals; (c) analysis of real estate issues; (d) analysis of utility deposit issues; (e)
2 discussion of PG&E business issues at financial subcommittee meetings; (f) review and analysis
3 of rate setting issues; and (g) review and analysis of the settlement between Edison and the
4 CPUC.

5
6 During the Second Application Period, Milbank professionals spent a total of
7 234.15 hours rendering services in this category, for which Milbank seeks compensation of
8 \$90,509.50. A summary of the Milbank professionals who rendered services in this category and
9 the corresponding amount of fees requested is included in Exhibit "2." The Billing Report for
10 this category, which sets forth a detailed description of the services rendered, is filed
11 concurrently herewith.

12 **4. Case Administration/U.S. Trustee Compliance (Category 04).**

13 Services rendered by Milbank professionals in this category included:

14
15 (a) Negotiation of Plan confidentiality agreements between PG&E and the
16 Committee and revision of Committee Bylaws, including participation in internal Committee
17 deliberations with respect thereto.

18
19 (b) Preparation of ex parte pleadings to extend the protections of the
20 Securities Trading Order to new Committee member Pacific Investment Management Company
21 LLC ("PIMCO").

22 (c) Revision of Committee governance documents to incorporate new
23 Committee members PIMCO and Reliant Resources, Inc. ("Reliant").

24 (d) General review of incoming pleadings, calendaring, organization of
25 pleadings, and coordination of coverage for hearings and discovery matters.

26
27 (e) Response to a voluminous number of creditor inquiries regarding the
28

1 status of and developments in the Case, and creditor claims and treatment.

2 (f) Services rendered in connection with Committee, Subcommittee, and
3 Working Group composition issues, and liaison with the U.S. Trustee regarding those matters.

4 (g) Analysis of, and participation in internal Committee deliberations and
5 discussions with interested parties regarding, proceedings in connection with the motion of
6 certain municipalities to form an official committee of governmental entities and TURN's
7 motion to intervene, including analysis of PG&E's objections to the motions, preparation of
8 responses to the motions, and participation at the hearings thereon.

9 (h) Response to press inquiries and coordination of general public relations
10 issues.

11 (i) Review of PG&E's operating reports.

12 (j) Services rendered by Milbank's PG&E Case Clerk, who is in charge of
13 Milbank and Committee document control, consisting of scanning, indexing, filing, and
14 electronic dissemination of pleadings. Consistent with the Court's Memorandum Decision, the
15 billing rate for the PG&E Case Clerk was reduced from \$100 per hour to \$40 per hour, resulting
16 in a write-down of \$18,366.00. Charges for services rendered by the PG&E Case Clerk at the
17 \$40 per hour rate total \$12,244.00.

18 During the Second Application Period, Milbank professionals spent a total of
19 579.50 hours rendering services in this category, for which Milbank seeks compensation of
20 \$132,127.00. A summary of the Milbank professionals who rendered services in this category
21 and the corresponding amount of fees requested is included in Exhibit "2." The Billing Report
22 for this category, which sets forth a detailed description of the services rendered, is filed
23 concurrently herewith.

1 **5. Claims Administration and Objections (Category 05).**

2
3 Milbank reviewed and analyzed claims, and aided various creditors with inquiries
4 regarding particular claims. The Committee, through Milbank and its other professionals,
5 provided input in connection with the claims bar date process to ensure that appropriate bar dates
6 and procedures were established. Milbank and the Committee's other professionals have also
7 been working actively with the Debtor to create a claims objection process that balances the
8 needs of the Debtor, the Committee's interest in appropriate oversight and review, and the rights
9 of the claimants.

10 Specific services rendered by Milbank professionals in this category included:

11
12 (a) Review of pleadings and notices and input regarding general claims bar
13 date procedures and notices.

14 (b) Review of pleadings and notices and input regarding administrative claims
15 bar date procedures and notices.

16
17 (c) Correspondence and conferences with the Committee and various
18 creditors regarding claims issues.

19 (d) Review of administrative claims.

20
21 (e) Meetings with PG&E and other professionals to establish a claims review
22 and objections process and input with regard to formulating such process.

23 (f) Review and analysis of claim settlement with Lord Electric Company.

24
25 (g) Meeting with PG&E and other professionals regarding framework for
26 resolution of generator claims and input with regard to formulating such framework.

27 During the Second Application Period, Milbank professionals spent a total of

1 65.50 hours rendering services in this category, for which Milbank seeks compensation of
2 \$31,531.00. A summary of the Milbank professionals who rendered services in this category and
3 the corresponding amount of fees requested is included in Exhibit "2." The Billing Report for
4 this category, which sets forth a detailed description of the services rendered, is filed
5 concurrently herewith.

6
7 **6. Fee/Employment Applications (Category 07).**

8 In a case of this size, compliance with employment and fee requirements of the
9 U.S. Trustee and the Bankruptcy Court is time consuming. To fulfill its functions, the
10 Committee was required to employ various professionals, including attorneys, accountants and
11 financial advisors, investment bankers, forward price curve consultants and legislative
12 consultants. The hiring and timely compensation of these professionals is essential to enable the
13 Committee to fulfill its statutory obligations in this Case.

14 Specific services rendered by Milbank professionals in this category included:
15

16 (a) Review of monthly pre-bills for redaction of time entries and reduction or
17 elimination of time entries and charges, where appropriate, as well as drafting the Milbank
18 monthly cover sheet applications.

19 (b) Review of and input in connection with fee applications of the
20 Committee's financial advisors, PricewaterhouseCoopers LLP ("PWC"), and the Committee's
21 investment banker, Saybrook Capital, LLC ("Saybrook").
22

23 (c) Drafting of monthly fee applications for LCG Consulting and Public
24 Policy Advocates, LLC.

25 (d) Advice to various Committee professionals regarding fee application
26 issues.
27

1 (e) Drafting of monthly Committee member expense reimbursement
2 applications.

3 (f) Preparation of the Milbank First Interim Fee Application. However,
4 consistent with the Memorandum Decision, Milbank has eliminated time spent by attorneys
5 supplementing the First Interim Fee Application. Accordingly, 101.30 hours have be written-off,
6 resulting in a fee reduction of \$49,973.50.
7

8 While Milbank has complied with the Court's Memorandum Decision and has
9 written off more than 100 hours that it spent responding to the U.S. Trustee's objections to the
10 First Interim Application, Milbank requests that it be allowed to address this issue with the Court
11 at the hearing on the Second Interim Fee Application. Milbank believes that a write-off of this
12 magnitude is not equitable under the circumstances. First, in an ordinary fee application
13 proceeding, Milbank would have had an opportunity to reply to the U.S. Trustee' objections prior
14 to the fee hearing. Generally, a Court would have allowed a firm to be compensated for the time
15 spent in drafting the reply. Here, because the fee application procedures order did not allow for a
16 reply, Milbank was required to supplement its application, rather than file a standard reply.⁴
17 Moreover, the U.S. Trustee's objections were, for the most part, overruled, including her
18 sweeping objections to over \$650,000 in fees for regulatory work and misplaced objections in
19 connection with Milbank's work on the Commodities Trading Order and employment of Rogers
20 and Associates. Milbank was forced to spend countless hours demonstrating the obvious—that
21 extensive regulatory work was required in the largest utility bankruptcy in the history of this
22 country—and was assessed a \$15,000 disallowance for not additionally reallocating each of its
23 time entries and recalculating its fees by reference to its descriptive breakdown, in addition to

24 ⁴ In remarks at the initial hearing on the First Interim Application, counsel for the U.S. Trustee
25 appeared to argue that since the original interim fee procedures order did not contemplate a reply
26 to objections prior to the scheduled hearing, replies were not to be permitted or considered.
27 Clearly, this was not the intent of the parties or the Court. The procedures were so structured to
28 enable the Court to hear argument and then decide on an appropriate briefing schedule focused
only on those issues that the Court did not feel had been or could be addressed adequately in oral
argument.

disallowance of the cost of developing its reply. Milbank requests that the Court take a second look at its Memorandum Decision and allow all or a portion of Milbank's fees incurred in supplementing the First Interim Fee Application.

The Court should note that four Milbank lawyers participated in the hearing on the First Interim Fee Application. Messrs. Moore and Feo traveled to San Francisco and Messrs. Aronzon and Soroichinsky participated via telephone from Los Angeles. Milbank believes that the participation of each of these individuals was important because each billed a significant amount of time to the case on different matters. Accordingly, to the extent that the Court had specific questions with regard to time entries, Milbank wanted to be prepared to adequately respond to the Court's inquiries.

During the Second Application Period, Milbank professionals spent a total of 282.90 hours rendering services in this category, for which Milbank seeks compensation of \$102,994.50. A summary of the Milbank professionals who rendered services in this category and the corresponding amount of fees requested is included in Exhibit "2." The Billing Report for this category, which sets forth a detailed description of the services rendered, is filed concurrently herewith.

8. Fee/Employment Objections (Category 08).

Like the Committee, PG&E has hired, and sought compensation for, numerous professionals. Milbank has closely tracked these requests, as well as any objections thereto, to ensure that PG&E's professionals have no adverse interests to the estate and are compensated in a reasonable manner.

Specific services rendered by Milbank professionals in this category included:

(a) Review of first interim fee applications filed by the Debtor's professionals, including PWC's analysis of these applications.

1 (b) Advice to Committee professionals regarding fee applications.

2 (c) Review of Debtor's application to employ Inisfree.

3
4 During the Second Application Period, Milbank professionals spent a total of
5 46.50 hours rendering services in this category, for which Milbank seeks compensation of
6 \$20,723.00. A summary of the Milbank professionals who rendered services in this category and
7 the corresponding amount of fees requested is included in Exhibit "2." The Billing
8 Report for this category, which sets forth a detailed description of the services rendered, is filed
9 concurrently herewith.

10 **9. Stay Litigation (Category 10).**

11
12 Milbank's work in this category included review, analysis, response where
13 appropriate, and participation at hearings where appropriate with regard to the following
14 motions:

15 (a) Relief from stay motions filed by, among others: (1) California Power
16 Exchange; (2) Stockton; (3) Antioch; (4) United Cogen QF group; (5) Oildale QF group; (6)
17 Jackson; (7) Bowsher; (8) Pompey; (9) Enron; (10); Department of Water Resources; (11) U.S.
18 Automobile Association; (12) SAMTRANS; (13) Rahjboy; (14) Pacific Lumber; (15) Viacom;
19 (16) Duke Energy; (17) Tate/Liberty Fuller; (18) Pacific Industries; (19) Seto; (20) Emery; (21)
20 Caldeway; (22) Grimaldi; (23) Behr; (24) Big Valley; and (25) Cardinal QF group.

21
22 (b) Assumption of QF PPAs and QF settlements, including those of (1) the
23 Midset group; (2) Longerwert Dairy; and (3) the Oildale group.

24 (c) Relief from stay proceedings in connection with the BFM Contract
25 litigation.

26
27 (d) The Martinez QF group appeal.

1 (e) Relief from stay motions to allow condemnation and reverse
2 condemnation actions to proceed to judgment in state court.

3 (f) Relief from stay motions to allow personal injury actions to proceed to
4 judgment in state court.
5

6 During the Second Application Period, Milbank professionals spent a total of
7 121.50 hours rendering services in this category, for which Milbank seeks compensation of
8 \$54,722.50. A summary of the Milbank professionals who rendered services in this category and
9 the corresponding amount of fees requested is included in Exhibit "2." The Billing Report for
10 this category, which sets forth a detailed description of the services rendered are filed
11 concurrently herewith.

12
13 **10. Other Litigation (Category 12).**

14 Milbank's work in this category included review, analysis, response where
15 appropriate, and appearances at hearings, where appropriate, in connection with the following:

16 (a) The appeal filed by Martinez Cogen of the Court's order denying its
17 motion for relief from stay and for adequate protection.
18

19 (b) Proceedings in connection with key personnel disclosures.

20 (c) Settlement of PG&E's litigation with Modesto.
21

22 (d) Sierra Pacific's motion for partial summary adjudication.

23 (e) Settlement of PG&E's claim in the King bankruptcy litigation
24 proceedings.
25

26 (f) Preparation and negotiations in connection with the Committee's Rule
27 2004 motion to obtain discovery from the CDWR.

1 (g) Numerous meetings of the Litigation Subcommittee.

2 (h) Monitoring of the Cal ISO advisory proceedings.

3
4 During the Second Application Period, Milbank professionals spent a total of
5 87.30 hours rendering services in this category, for which Milbank seeks compensation of
6 \$41,061.00. A summary of the Milbank professionals who rendered services in this category and
7 the corresponding amount of fees requested is included in Exhibit "2." The Billing Report for
8 this category, which sets forth a detailed description of the services rendered are filed
9 concurrently herewith.

10
11 **11. Meeting of Creditors (Category 13).**

12 Committee members and their outside counsel and advisors, Milbank and the
13 Committee's other professionals have devoted a significant amount of time in preparing for and
14 attending meetings of the full Committee, the Litigation Subcommittee, the Finance
15 Subcommittee, the Legislative and Regulatory Subcommittee, and the Plan Working Group.
16 These meetings form the core activities of the Committee in developing its positions on all
17 significant issues that arise in the Case. Such meetings occurred on a weekly and sometimes
18 daily basis by telephone conference call and in person. Face-to-face meetings typically were in
19 San Francisco to facilitate in-person dialogue with PG&E's senior management and the counsel
20 and advisors to PG&E and at times its Parent. Such meetings often were conducted at the
21 request of PG&E. These meetings mark the heart of a well-functioning and meaningful
22 Committee process.

23 Services rendered by Milbank professionals in this category included:

24
25 (a) Preparation for and attendance at numerous meetings of the full
26 Committee, the Litigation Subcommittee, the Finance Subcommittee, the Legislative and
27 Regulatory Subcommittee, and the Plan Working Group, at times involving in-person or

1 telephonic participation by the senior management of PG&E, its Parent PG&E Corp., and the
2 numerous bankruptcy, regulatory and other counsel and financial advisors and investment
3 bankers of each of them.

4 (b) Preparation for and attendance at numerous meetings, frequently by
5 telephone conference call, among Committee, Subcommittee and Working Group members and
6 PG&E regarding general case administration issues.

7
8 (c) Preparation for and attendance at numerous meetings, frequently by
9 telephone conference call, among Committee, Subcommittee and Working Group members and
10 PG&E, regarding various motions brought by PG&E.

11 During the Second Application Period, Milbank professionals spent a total of
12 66.90 hours rendering services in this category, for which Milbank seeks compensation of
13 \$38,215.50. A summary of the Milbank professionals who rendered services in this category and
14 the corresponding amount of fees requested is included in Exhibit "2." The Billing Report for
15 this category, which sets forth a detailed description of the services rendered is filed concurrently
16 herewith.

17
18 **12. Plan and Disclosure Statement (Category 14).**

19 One of the key functions of a committee is to provide input on a debtor's plan of
20 reorganization. Since an early point in the case, the Committee has been engaged in intensive
21 and continuous discussions with PG&E regarding Plan issues. A Plan Working Group,
22 consisting of a smaller representative subset of five (5) of the Committee's eleven (11) members,
23 was formed to facilitate the Plan analysis and formulation process. Weekly, and at times more
24 frequent, in-person meetings have been held between the full Committee, the Plan Working
25 Group or individual Committee members, on the one hand, and representatives of PG&E and at
26 times its Parent, on the other hand, to discuss various Plan issues. Milbank professionals have
27 been actively involved in shaping and orchestrating this Plan dialogue and coordinating with the
28

1 Committee's financial advisors and investment bankers. These discussions intensified as the
2 Plan process became more mature.

3 The Committee's extensive Plan negotiations spearheaded by Milbank, PWC and
4 Saybrook led to the formulation of a Plan term sheet which was embodied in the Plan Support
5 Agreement entered into by and between the Committee, PG&E and its Parent. The Support
6 Agreement term sheet served as a basis for the formulation of the Plan that was filed on
7 September 20, 2001. The Plan provides for payment to all creditors in full with interest.
8

9 Since the filing of the Disclosure Statement and the Plan, the Committee and its
10 professionals have worked daily to refine the Disclosure Statement to ensure that all appropriate
11 disclosures are made. The Committee and its professionals also have been negotiating with the
12 Debtor daily with regard to terms of the Plan that were not addressed by the Support Agreement,
13 such as interest rate calculation, payment, and distribution issues, classification issues, executory
14 contract issues (particularly those involving the municipalities), LC Bank issues, release issues,
15 issues related to the marketability of the new debt securities at par, disputed claim issues,
16 conditions to Plan effectiveness, provisions of the new long-term notes, and a host of other issues
17 not covered by the Support Agreement. The Committee and its professionals have worked with
18 the various creditor constituencies to resolve the outstanding disputes between them and the
19 Debtor. This effort has led to a number of settlements, including Debtor's settlements with the
20 LC Banks and the QFs.

21 Specific services rendered by Milbank professionals in this category included:
22

23 (a) Numerous meetings involving the Committee or the Plan Working Group
24 and the Committee's professionals, on the one hand, and PG&E and its sole shareholder Parent,
25 and their respective counsel, accountants, financial advisors, investment bankers, and other
26 advisors, on the other hand, regarding Plan and Disclosure Statement issues.

27 (b) Extensive research and analysis of Plan issues.
28

- 1 (c) Formulation of Plan principles.
- 2 (d) Extensive Plan feasibility analysis.
- 3
- 4 (e) Extensive negotiations with PG&E with regard to treatment of creditors
- 5 under the Plan.
- 6 (f) Drafting and extensive negotiation of Support Agreement.
- 7
- 8 (g) Extensive review and revisions of the Disclosure Statement and Plan.
- 9
- 10 (h) Extensive negotiations with PG&E and the Parent in connection with the
- 11 disclosure made in the Disclosure Statement and the terms of the Plan that were not covered by
- 12 the Support Agreement.
- 13 (i) Preparation of Comments on the Disclosure Statement and attendance at
- 14 hearings on the adequacy of the Disclosure Statement.
- 15
- 16 (j) Extensive analysis of the preemption and sovereign immunity issues
- 17 raised by the Plan.
- 18 (k) Extensive analysis of the procedural mechanisms required for Plan
- 19 confirmation (i.e. whether an adversary proceeding was required to obtain the injunctive,
- 20 declaratory and preemptive relief sought by the Plan), preparation of an extensive brief on this
- 21 issue, and attendance at the hearing.
- 22
- 23 (l) Extensive review and analysis of approximately seventy (70) objections
- 24 filed in connection with the Disclosure Statement and negotiations with the Debtor and the
- 25 objecting parties to help resolve these objections.
- 26 (m) Analysis of interest rate issues presented by the Plan.
- 27
- 28 (n) Negotiation of exclusivity issues.

1 (o) Analysis of issues relating to new debt securities trading at par.

2 Formal Plan presentation or negotiating meetings, as well as certain other full
3 Committee or Plan Working Group meetings described in ¶11 (Category 18), were often
4 attended by more than one Milbank attorney. Such meetings frequently involved numerous
5 attorneys from multiple firms representing the Debtor and representing the Parent. Moreover,
6 Committee members frequently included their internal and/or external legal counsel. Each
7 Milbank attorney played a distinct and necessary role at each meeting. Participation of each
8 attorney with a specific knowledge base in the Case or area of expertise was required in order to
9 enable Milbank to provide specific answers or guidance, or to lead a specific negotiation or
10 discussion, in the context of these large meetings. Paul Aronzon was in charge of the overall
11 Plan preparation, negotiation and revision process. Robert Moore was responsible for addressing
12 claims and general litigation issues, as well as Plan feasibility issues, preemption, Disclosure
13 Statement objections and revisions, and the procedural mechanisms for Plan confirmation and
14 Disclosure Statement approval. Ed Feo was responsible for addressing the regulatory aspects of
15 the Plan. Allan Marks was responsible for Plan finance issues. Tax partner Simon Friedman
16 was responsible for addressing the tax consequences of the Plan. Accordingly, the attendance of
17 more than one of these attorneys at many of the meetings was critical to enable the meetings to
18 proceed in a productive manner. Each of these attorneys appeared by telephone as much as
19 possible where in-person participation was not necessary.
20

21 Three Milbank lawyers (Mr. Moore in Court and Messrs. Aronzon and
22 Sorochinsky via telephone) participated in the initial Disclosure Statement status conference and
23 the subsequent hearing on the procedural mechanisms for Plan confirmation. Since Messrs.
24 Aronzon and Sorochinsky are both integrally involved in the Disclosure Statement and Plan
25 process and worked on the papers presented to the Court, Milbank believes that their
26 participation via telephone was warranted and reasonable, particularly given the magnitude of
27 the hearings. Milbank has made a concerted effort to have one lawyer cover the vast majority of
28

1 hearings and to appear by telephone at most hearings. However, in a case of this magnitude,
2 appearance at certain key hearings by more than one attorney is reasonable and efficient to
3 promote continuity for the attorneys principally involved in the case.

4
5 During the Second Application Period, Milbank professionals spent a total of
6 1,276.20 hours rendering services in this category, for which Milbank seeks compensation of
7 \$652,684.50. A summary of the Milbank professionals who rendered services in this category
8 and the corresponding amount of fees requested is included in Exhibit "2." The Billing Report
9 for this category, which sets forth a detailed description of the services rendered, is filed
10 concurrently herewith.

11 **13. Business Analysis (Category 16)**

12 The work performed by Milbank in this category included:

- 13 (a) Review and analysis of price forward curve models.
14 (b) Review and analysis of DWR Revenue Requirements.
15 (c) Review and analysis of creditor recoveries under prospective Plan models.
16 (d) Review and analysis of financial aspects of key draft Plan terms.

17 During the Second Application Period, Milbank professionals spent a total of
18 15.70 hours rendering services in this category, for which Milbank seeks compensation of
19 \$8,879.00. A summary of the Milbank professionals who rendered services in this category and
20 the corresponding amount of fees requested is included in Exhibit "2." The Billing Report for
21 this category, which sets forth a detailed description of the services rendered, is filed
22 concurrently herewith.

23
24 **14. Tax Issues (Category 21).**

25 Services rendered by Milbank professionals listed in this category included:

- 26 (a) Research and analysis of tax issues related to confirmation of the Plan,
27 including tax structure, issuance of securities, exchange of indebtedness, and IRS approvals.
28

1 (b) Conferences with PG&E and its tax professionals regarding tax issues in
2 connection with confirmation and implementation of the Plan.

3 During the Second Application Period, Milbank professionals spent a total of 6.30
4 hours rendering services in this category, for which Milbank seeks compensation of \$3,622.50.
5 A summary of the Milbank professionals who rendered services in this category and the
6 corresponding amount of fees requested is included in Exhibit "2." The Billing Report for this
7 category, which sets forth a detailed description of the services rendered, is filed concurrently
8 herewith.

9
10 **15. Non-Working Travel (Category 24).**

11 Services rendered by Milbank professionals listed in this category included travel
12 to and from San Francisco for meetings of the Committee and the Plan Working Group, meetings
13 with PG&E and its counsel and other professionals, meetings with the Committee's financial
14 advisor, PricewaterhouseCoopers LLP, and in connection with Court appearances. All
15 reasonable efforts were made to appear at Court hearings and at meetings telephonically.

16
17 Notwithstanding the foregoing, in accordance with the Memorandum Decision,
18 Milbank has written off all non-working travel time incurred prior to September 11, 2001.
19 Thereafter, Milbank has written off all non-working travel time exceeding two (2) hours each
20 way. These write-offs have resulted in a decrease in Milbank's fees in the amount of
21 \$11,452.50.

22 During the Second Application Period, Milbank professionals recorded a total of
23 8.40 hours in this category, for which Milbank seeks compensation of \$4,203.00. This time
24 frequently involved travel delays and other necessary travel time that precluded Milbank
25 professionals from providing services to other clients of the firm. A summary of the Milbank
26 professionals who rendered services in this category and the corresponding amount of fees
27 requested is included in Exhibit "2." The Billing Report for this category, which sets forth a
28

1 detailed description of the services rendered, is filed concurrently herewith.

2
3 **16. Federal Regulatory/FERC (Category 26)**

4 Milbank continued to conduct analysis and advise the Committee on developments at the
5 FERC relevant to PG&E. The pertinent FERC proceedings primarily involved the payment of
6 refunds for wholesale sales of electricity in California, creditworthiness issues with respect to
7 electricity sales in California, whether the DWR would be responsible for payment of wholesale
8 electric power purchases made on behalf of PG&E and SCE, and ongoing developments
9 regarding the DWR wholesale purchase contracts, including the CPUC's challenges at FERC
10 pertaining to those contracts. Milbank's professionals analyzed filings made at FERC and
11 FERC's orders, attended hearings, and provided reports to the Committee on these matters. It is
12 essential that Milbank continue to track relevant FERC matters given the direct bearing of these
13 proceedings on PG&E's cash flow and assets, feasibility of the Plan, and the extent of PG&E
14 liability for claims asserted by the generators. Such services were performed at the direction of
15 the Legislative and Regulatory Subcommittee of the Committee or of the Committee itself.

16
17 During the Second Application Period, Milbank professionals recorded a total of
18 135.90 hours in this category, for which Milbank seeks compensation of \$55,366.50. A
19 summary of the Milbank professionals who rendered services in this category and the
20 corresponding amount of fees requested is included in Exhibit "2." The Billing Report for this
21 category, which sets forth a detailed description of the services rendered, is filed concurrently
22 herewith.

23 **17. State Regulatory/CPUC (Category 27)**

24 Milbank also continued analyze and provide reports to the Committee on relevant
25 matters before the CPUC. Milbank primarily focused on CPUC proceedings concerning the
26 allocation of DWR's revenue requirement to PG&E, Utility Retained Generation ("URG")
27 revenue requirements, the DWR/CPUC rate agreement, the investigation into whether PG&E
28

1 violated the conditions imposed by the CPUC in its orders authorizing the formation of PG&E
2 Corp., the repayment of amounts owed to QFs, the procurement obligations of PG&E, the
3 approval of a servicing agreement between PG&E and DWR, and the proceedings related to
4 direct access. Milbank reviewed and analyzed filings submitted by PG&E and other parties with
5 respect to these matters, held meetings with the company to discuss the proceedings, and
6 analyzed the draft orders, final decisions, and rulings of the CPUC. Milbank also tracked and
7 conducted analysis of PG&E's complaint proceeding against the CPUC, which alleged that the
8 CPUC's decision to deny PG&E's recovery of wholesale power costs from retail customers
9 violated the filed rate doctrine, as well as the CPUC's decision and settlement with respect to
10 SCE's filed rate doctrine complaint proceeding. All of these CPUC matters were pertinent to
11 evaluating PG&E's cash flows, both pre-and post-petition, and the value of PG&E's assets,
12 which are heavily dependent on their regulatory treatment by the CPUC. Such services were
13 performed at the direction of the Legislative and Regulatory Subcommittee of the Committee or
14 of the Committee itself.

15
16 During the Second Application Period, Milbank professionals recorded a total of
17 355.10 hours in this category, for which Milbank seeks compensation of \$142,707.50. This time
18 frequently involved travel delays and other necessary travel time that precluded Milbank
19 professionals from providing services to other clients of the firm. A summary of the Milbank
20 professionals who rendered services in this category and the corresponding amount of fees
21 requested is included in Exhibit "2." The Billing Report for this category, which sets forth a
22 detailed description of the services rendered, is filed concurrently herewith.

23 **18. Regulatory Plan Implementation/Consummation (Category 28)**

24
25 If implemented, the Plan will have a profound impact on the manner in which
26 PG&E and its assets are regulated. Indeed, federal and state regulatory implications were among
27 the central concerns in development of the Plan and are critical in obtaining the numerous
28 regulatory approvals necessary for Plan implementation.

1 In general, PG&E's Plan provides for the disaggregation of PG&E's business into
2 four companies: (a) an electric generation company that will make wholesale sales of electricity;
3 (b) an electric transmission company; (c) a natural gas transmission company; and (d) a retail
4 natural gas and electric distribution company. The Plan also provides that the electric
5 generation company and the retail distribution company will enter into a bilateral power sales
6 agreement that is based on a novel pricing structure that must be approved by FERC. In
7 addition, the Plan contemplates that PG&E's electric transmission facilities will ultimately be
8 transferred to a Regional Transmission Organization ("RTO") approved by FERC.

9 Under PG&E's current structure, its electric generation, electric distribution, and
10 all its natural gas facilities are subject to extensive regulation by the CPUC, while only the rates
11 and services provided via its electric transmission facilities are regulated by FERC. With the
12 disaggregation of these businesses under the Plan, however, the rates and services of each of the
13 businesses, with the exception of the retail natural gas and electric business, will become
14 regulated by FERC exclusively.

15
16 Milbank has devoted considerable time to addressing the myriad of regulatory
17 issues related to Plan implementation and consummation. Milbank analyzed a variety of
18 regulatory issues stemming from the Plan as proposed to the Bankruptcy Court, as well as the
19 regulatory implications of alternative approaches that were explored by PG&E. Milbank held a
20 number of discussions with PG&E and its regulatory counsel regarding the Plan, conducted
21 research and analysis with respect to pertinent regulatory decisions and filings, and provided
22 reports to, and held discussions with, Committee members to explain the complicated regulatory
23 issues.

24 In addition, the Support Agreement between the Committee and the Plan
25 Proponents provides that the Committee shall advocate and support all approvals and required
26 orders concerning the Plan. In this regard, PG&E has requested that the Committee become a
27 party to and participate directly in the regulatory proceedings initiated to implement the Plan.

1 Regulatory approvals must be obtained from FERC, the Nuclear Regulatory Commission, and
2 the Securities and Exchange Commission.

3
4 PG&E has submitted numerous applications to FERC for purposes of seeking
5 regulatory authorizations required for Plan implementation and consummation. PG&E has also
6 filed applications with the Nuclear Regulatory Commission seeking authorizations necessary for
7 Plan implementation, and will soon be submitting an application for authorization from the
8 Securities and Exchange Commission. The Plan is opposed by the CPUC, which has vigorously
9 challenged the implementation of the Plan in proceedings before the CPUC, the FERC, and this
10 Court. Milbank spent considerable time analyzing, providing reports, and advising the
11 Committee on early drafts and revised versions of these voluminous and complicated regulatory
12 filings. Milbank has also spent considerable time responding to the challenges made to the Plan
13 by the CPUC. Milbank also provided comments to PG&E with regard to these filings to help
14 anticipate regulatory concerns and facilitate approval.

15 DWR objected to providing the Committee with access to its model for allocating
16 its revenue requirements to PG&E. Milbank was forced to seek a motion to compel the
17 production of the model and other relevant documents. Milbank spent time preparing the
18 motion, consulting with the Committee's other professionals, and negotiating with the California
19 Attorney General's office.

20
21 Milbank's considerable work on regulatory issues concerning Plan
22 implementation and consummation was essential to evaluate the feasibility of the Plan and to
23 advise the Committee with respect to Plan implications.

24 During the Second Application Period, Milbank professionals recorded a total of
25 384.40 hours in this category, for which Milbank seeks compensation of \$179,944.00. A
26 summary of the Milbank professionals who rendered services in this category and the
27 corresponding amount of fees requested is included in Exhibit "2." The Billing Report for this

1 category, which sets forth a detailed description of the services rendered, is filed concurrently
2 herewith.

3
4 **19. Legislative (Category 29)**

5 Milbank continued to analyze and provide reports to the Committee on State
6 legislative matters related to PG&E and other electric utilities in California. Milbank tracked
7 hearings, reviewed legislative proposals, and participated in discussions with legislators and
8 staff. The legislative proposals addressed such matters as the State's memoranda of
9 understanding with SCE, which was still very much under legislative consideration during the
10 Second Application Period, and San Diego Gas & Electric Company to resolve the severe
11 financial issues facing those companies, DWR matters, retail competition and rates, and various
12 alternatives for addressing the financial crisis of the California electric utilities. Analyzing
13 California legislative developments remains critical to the Committee, given that legislative
14 actions could affect the options available to PG&E in offering proposals to repay creditors and
15 reorganize its business.

16
17 Additionally, to a more limited extent, Milbank analyzed and provided reports to
18 the Committee on energy legislation before the U.S. Congress that could have a direct bearing
19 upon PG&E and the other California utilities. For example, legislative proposals under
20 consideration addressed the California energy crisis, the repeal of laws governing the regulation
21 of public utility holding companies, development of RTOs, regulation of wholesale electric
22 power markets, and FERC's authority with respect to the ordering of refunds. It was important
23 that Milbank report to the Committee on these legislative initiatives given that they could
24 directly impact PG&E's business, its assets and the Plan. Such services were performed at the
25 direction of the Legislative and Regulatory Subcommittee of the Committee or of the Committee
26 itself.

27 During the Second Application Period, Milbank professionals recorded a total of
28

1 97.20 hours in this category, for which Milbank seeks compensation of \$36,216.50. A summary
2 of the Milbank professionals who rendered services in this category and the corresponding
3 amount of fees requested is included in Exhibit "2." The Billing Report for this category, which
4 sets forth a detailed description of the services rendered, is filed concurrently herewith.

5
6 **IV.**

7 **SUMMARY OF ACTUAL AND NECESSARY EXPENSES INCURRED BY MILBANK**

8 Milbank maintains records of all actual and necessary out-of-pocket expenses
9 incurred and typically charged in connection with rendering professional services to its clients in
10 the ordinary course of its business practice. As is typical of Milbank's practice when
11 representing creditors' committees, Milbank has reduced to cost or not charged certain of these
12 out-of-pocket expenses to the estate in accordance with the UST Guidelines and the Court
13 Guidelines and to ensure the reasonableness of Milbank's fee and expense request. Specifically,
14 Milbank has voluntarily reduced its expenses by a total of \$29,805.57. A brief explanation of
15 certain costs incurred and charged to the estate is set forth below:

16 (a) Milbank charges its clients for photocopying done in-house at the rate of
17 \$0.20 per page; copying done by outside services is charged at cost.

18
19 (b) Milbank charges its clients for document retrieval services, computer
20 research and other specialized searches and services, such as messengers and library retrievals at
21 cost.

22 (c) Milbank charges its clients for mileage if submitted for reimbursement by
23 an employee (\$0.345 per mile, if sought) and parking costs incurred by its attorneys and legal
24 assistants in connection with services rendered at cost.

25
26 (d) Milbank charges its clients for cab fares or other transportation costs
27 incurred by its attorneys when working on specific client matters at cost.

1 (e) Milbank normally charges its clients for word processing services
2 rendered by a specialized operator and by the secretary assigned to each lawyer. Milbank also
3 charges for the use of its computer system based on the amount of time utilized to prepare
4 documents. In order to comply with the UST Guidelines and the Court Guidelines, however, no
5 such charges are included in this Second Interim Application.

6 (f) Milbank normally charges its clients for the cost of overtime and weekend
7 meals when pressing client matters require the attorney to work during the meal. In accordance
8 with the UST Guidelines and the Court Guidelines, however, no such charges are included in this
9 Second Interim Application.

10 (g) In accordance with the UST Guidelines and the Court Guidelines, Milbank
11 is seeking reimbursement for outgoing facsimile transmissions at the rate of \$.20 per page plus
12 actual costs of the connection.

13 (h) In accordance with the UST Guidelines and the Court Guidelines, Milbank
14 is seeking reimbursement for telephone calls at cost.

15
16
17 V.

18 **COMPENSATION REQUESTED AND RELEVANT LEGAL STANDARD**

19 To grant a request for compensation pursuant to Bankruptcy Code section 330,
20 the Court must find that such request is reasonable. The reasonableness of a compensation
21 request is determined by the "lodestar" method. See In re Yermakov, 718 F.2d 1465, 1471 (9th
22 Cir. 1983). Under the lodestar approach, "reasonable" compensation is calculated by
23 multiplying the number of hours reasonably expended by the hourly rate of the professional. In
24 re Rheuban, 121 B.R. 368, 383 (Bankr. C.D. Cal. 1990). There is a strong presumption that the
25 lodestar product is reasonable under Bankruptcy Code section 330. See In re Drexel Burnham
26 Lambert Group, Inc., 133 B.R. 13, 22 (Bankr. S.D.N.Y. 1991).

1 The reasonableness of a professional's hourly rate is based on the cost for
2 comparable services charged in the area, in non-bankruptcy matters. See In re Yermakov, 718
3 F.2d at 1471. The reasonableness of the hours expended on a task is based on whether the
4 services provided were actual and necessary. See In re Nucorp Energy, Inc., 764 F.2d 655, 658
5 (9th Cir. 1985).

6 Milbank's fees are reasonable given the size and complexity of the bankruptcy
7 case and are commensurate with the fees that Milbank has been awarded in comparable chapter
8 11 cases and that counsel of comparable experience and expertise charge on a regular basis to
9 represent creditor committees in comparable chapter 11 cases. Accordingly, utilizing the
10 lodestar method, Milbank's fee and expense request is reasonable and should be allowed and
11 paid pursuant to Bankruptcy Code section 330. See Drexel, 133 B.R. at 22.

13 VI.

14 CONCLUSION

15 For the reasons set forth above and pursuant to Bankruptcy Code sections 330 and
16 331, Bankruptcy Rule 2016, the Court Guidelines, the UST Guidelines and the standards adopted
17 by courts in awarding attorneys' fees and costs, Milbank submits that the fees for services
18 rendered and costs and expenses incurred on behalf of the Committee during the Second
19 Application Period in the total amount of \$1,807,525.11 are reasonable and should be allowed on
20 an interim basis and paid in full.

21
22 No agreement or understanding of any kind or nature exists between Milbank and
23 any other person or entity for the sharing, division, or payment of any portion of the
24 compensation awarded to Milbank for services rendered or expenses incurred in connection with
25 Milbank's representation of the Committee in the bankruptcy case, except as among the partners,
26 associates and employees of Milbank.

1 **WHEREFORE**, Milbank respectfully requests that this Court enter an order:

2
3 1. Approving this Second Interim Application in its entirety.

4 2. Approving an interim award of compensation in the amount of
5 \$1,690,874.00 for professional services rendered and in the amount of \$116,651.11 as
6 reimbursement of costs and expenses incurred, for a total award of \$1,807,525.11.

7
8 3. Authorizing and directing PG&E to immediately pay to Milbank the
9 allowed amounts, less any such amounts already paid pursuant to the Order Establishing Interim
10 Fee Application and Expense Reimbursement Procedure.

11 4. Granting such other and further relief as the Court deems just and proper.

12
13 DATED: January 12, 2002 Respectfully submitted.

14 MILBANK, TWEED, HADLEY & McCLOY LLP

15 By: Robert Jay Moore
16 Paul S. Aronzon
17 Robert Jay Moore
18 Michael I. Sorochinsky

19 Counsel to Official Committee of Unsecured Creditors
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CERTIFICATION

I, Robert Jay Moore, am the professional designated by Milbank to ensure compliance with the United States Bankruptcy Court Northern District of California Guidelines for Compensation and Expense Reimbursement of Professionals and Trustee ("Court Guidelines"). I certify that (a) I have read the Second Interim Application; (b) to the best of my knowledge, information and belief, formed after reasonable inquiry, the compensation and expense reimbursement sought is in conformity with the Court Guidelines, except as specifically noted in the Application; and (c) the compensation and expense reimbursement requested are billed at rates, in accordance with the firm's practice, no less favorable than those customarily employed by Milbank and generally accepted by Milbank's clients.

DATED: January 12, 2002


Robert Jay Moore