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9 Special Counsel for Debtor in Possession
10 PACIFIC GAS AND ELECTRIC COMPANY

11 UNITED STATES BANKRUPTCY COURT

12 NORTHERN DISTRICT OF CALIFORNIA

13 SAN FRANCISCO DIVISION

14 In re

15 PACIFIC GAS AND ELECTRIC
16 COMPANY, a California corporation,

17 Debtor.

18 Federal I.D. No. 94-0742640

Case No.: 01-30923 DM

Chapter 11 Case

Judge: Hon. Dennis Montali

Date: February 26, 2002

Time: 9:30 a.m.

19 **HELLER EHRMAN WHITE & McAULIFFE LLP'S SECOND INTERIM FEE**
20 **APPLICATION FOR ALLOWANCE AND PAYMENT OF COMPENSATION**
21 **AND REIMBURSEMENT OF EXPENSES FOR THE PERIOD**
22 **AUGUST 1, 2001, THROUGH NOVEMBER 30, 2001**

23 Pursuant to the Order Establishing Interim Fee Application and Expense
24 Reimbursement Procedure, entered July 26, 2001, and amended November 8, 2001 ("Order
25 re Fee Applications"), Heller Ehrman White & McAuliffe LLP ("Heller Ehrman," or the
26 "Firm") files this Second Interim Fee Application (the "Application") for Allowance and
27 Payment of Compensation and Reimbursement of Expenses for the Period August 1, 2001,
28 Through December 31, 2001 (the "Application Period").

I. RETENTION

1. Heller Ehrman is Special Counsel to Pacific Gas and Electric Company, debtor
and debtor-in-possession in the above-referenced bankruptcy case ("PG&E" or the

Heller
Ehrman
White &
McAuliffe LLP

SECOND HELLER EHRMAN INTERIM FEE APPLICATION
CASE NO.: 01-30923 DM

50-275/323
Heller
Add: Kids Ogema Center

1 "Debtor"). Heller Ehrman's retention as Special Counsel was authorized by this Court's
2 Order Authorizing Debtor in Possession to Employ Heller Ehrman White & McAuliffe LLP
3 as Special Counsel, entered June 4, 2001 (the "June 4, 2001 Order"), effective *nunc pro tunc*
4 to April 6, 2001.

5 II. PRIOR COMPENSATION

6 2. As of the date of filing this Application, Heller Ehrman has received
7 compensation for services rendered and reimbursement for expenses incurred since the date
8 of petition (April 6, 2001) as follows:

9

Application Period	Amount Applied For	Description	Amount Paid
10 4/6/01 - 7/31/01 (first 11 post-petition interim fee application period)	\$2,264,794.01	100% of fees and 100% of expenses	\$2,246,327.81 ¹
12 8/1/01 - 8/31/01 (Aug. CSA period)	\$ 507,687.35	85% of fees and 100% expenses	\$ 507,687.35
13 9/1/01 - 9/30/01 (Sept. 14 CSA period)	\$ 398,784.91	85% of fees and 100% expenses	\$ 398,814.51 ²
15 10/1/01 - 10/31/01 (Oct. CSA period)	\$ 527,472.52	85% of fees and 100% expenses	\$ 542,494.90 ³
16 Total	\$3,698,738.79		\$3,695,324.57

17 3. On December 19, 2000, PG&E paid a retainer to Heller Ehrman in the amount of
18 _____

19 ¹ The amount paid reflects a disallowance of \$18,466.20 in fees. See Order
20 Approving Heller Ehrman White & McAuliffe LLP's First Interim Fee Application for
21 Allowance and Payment of Compensation and Reimbursement of Expenses for the Period
22 April 6, 2001, Through July 31, 2001 (Nov. 21, 2001); Memorandum Decision Regarding
Applications for Interim Compensation of Professionals (Dec. 12, 2001).

23 ² The September Cover Sheet Application inadvertently understated the request for
24 compensation by \$29.60, which PG&E paid.

25 ³ In its October Cover Sheet Application pleading, the Firm inadvertently did not
26 identify in Matter No. 13779-0083 (Wayne Roberts v. PG&E), although the bill for fees and
27 expenses incurred in that matter was attached to the October Cover Sheet Application. For
28 Matter No. 13779-0083, the fees were \$17,359.80 and the expenses were \$266.52, for a total
of \$17,626.32. Accordingly, the Firm's October Cover Sheet Application pleading should
have specified a request for payment of an additional \$15,023.35 (85% of \$17,359.80 +
100% of \$266.52). PG&E paid that additional amount.

1 \$350,000. Pursuant to written agreement between the parties dated December 19, 2000, the
2 retainer is not to apply to current billings in the ordinary course, but instead is to apply to
3 Heller Ehrman's unpaid fees and expenses in the event that PG&E fails to make payment in
4 the ordinary course. By written agreement dated April 5, 2001, the parties modified that
5 arrangement to authorize Heller Ehrman to apply the retainer to payment of unpaid pre-
6 petition fees and expenses on matters that are subject to an hourly billing arrangement. The
7 foregoing arrangement was approved by this Court in its June 4, 2001 Order (approving
8 Application of Debtor in Possession for Authority to Employ Heller Ehrman White &
9 McAuliffe LLP as Special Counsel (Apr. 17, 2001)); *see id.* ¶¶ 9-10; Declaration of Marie
10 L. Fiala ¶ 9 (Apr. 8, 2001). As of the date of submission of this Application, Heller Ehrman
11 has applied \$153,615.61 of the retainer to pay for a portion of its (i) pre-petition fees and
12 expenses on hourly rate engagements (\$136,622.77) and (ii) fees and costs incurred on the
13 petition date on hourly rate engagements (\$16,952.84). The current retainer balance is
14 \$196,384.39.

15 4. PG&E and Heller Ehrman are parties to a contingent fee agreement (entered into
16 on January 1, 1993) (the "Contingent Fee Agreement") pertaining to Heller Ehrman's
17 representation of PG&E in pursuing insurance recoveries from a number of insurance
18 companies for losses incurred by PG&E as a result of environmental liabilities. The terms
19 of the Contingent Fee Agreement are described in the Supplemental Application of Debtor
20 in Possession for Authority to Employ Heller Ehrman White & McAuliffe LLP as Special
21 Counsel (Insurance Coverage — Contingent Fee), filed May 18, 2001, and approved by this
22 Court in its June 4, 2001 Order. Heller Ehrman does not seek in this Application
23 compensation or expenses in connection with the contingent fee matter, but instead expects
24 to seek compensation and expenses with respect to that matter by a separate fee application
25 to be filed at an appropriate time.

26 III. CASE STATUS

27 5. Heller Ehrman relies on the description of the status of the bankruptcy case
28 provided by PG&E's general bankruptcy counsel, Howard Rice Nemerovski Canady Falk &

1 Rabkin.

2 IV. SUMMARY OF SERVICES PERFORMED

3 6. Heller Ehrman's services to PG&E during the Application Period are described in
4 detail⁴ in the billing statements attached to the accompanying Time Records Exhibit of
5 Special Counsel Heller Ehrman White & McAuliffe LLP for the Period August 1, 2001,
6 Through November 30, 2001 ("Time Records Exhibit").⁵

7 7. During the Application Period, Heller Ehrman has provided legal services to
8 PG&E on a number of matters. The bulk of those services has continued to involve efforts
9 to obtain rate relief for PG&E from governmental agencies or the courts in the wake of the

10
11 ⁴ In accordance with Heller Ehrman's professional obligations to its client, Heller
12 Ehrman's time records have been extensively edited and redacted to prevent disclosure of
13 confidential information, including information protected by the attorney-client privilege
14 and the work product doctrine. Such information includes, but is not limited to, the specific
15 subject matter of confidential attorney-client or attorney work product discussions; the
16 identity and work product of nontestifying expert consultants; and the exact nature of the
17 issues and theories that have been the subject of Heller Ehrman's legal research, analysis
18 and advice to PG&E in written or oral form. Heller Ehrman submits these time records
19 pursuant to order of the Bankruptcy Court and without any waiver of any privilege,
20 confidentiality protection or privacy right that might apply to the information contained
21 therein.

22 ⁵ The accompanying billing statements have been annotated to reflect fee reductions
23 ordered by the Court in its December 12, 2001, Memorandum Decision Regarding
24 Applications for Interim Compensation of Professionals ("December 12, 2001 Order").
25 Specifically, the billing statements show fee reductions for:

26 (a) File management activities by paralegals. *See* December 12, 2001 Order at
27 pp. 5-6.

28 (b) All time billed by paralegals Nneka Nwosu and M. Brett Stone. *See id.* at pp.
15-16.

(c) Reviewing and routing of articles regarding PG&E and the California energy
crisis by paralegals. *See id.* at pp. 14-15.

As discussed more fully below (*see infra* ¶ 75), Heller Ehrman respectfully requests
that the Court amend its December 12, 2001 Order to permit services in the above three
categories to be compensated at the Firm's full paralegal rates based on the showing made
in this Application and the supporting documentation filed or served herewith.

1 California energy crisis that caused PG&E's financial condition to deteriorate and
2 precipitated this bankruptcy filing. Heller Ehrman's services have included advice,
3 counseling, and representation regarding regulatory, rate setting and rate refund matters, and
4 litigation related to those and related subject areas. Heller Ehrman has represented PG&E in
5 connection with proceedings before the Federal Energy Regulatory Commission ("FERC")
6 addressing the California energy market and directly affecting PG&E. Heller Ehrman has
7 provided counseling, representation and assistance to PG&E in connection with proceedings
8 at the California Public Utilities Commission ("CPUC") involving PG&E. Heller Ehrman
9 also has represented PG&E in connection with a lawsuit against the Commissioners of the
10 CPUC, which seeks to require the CPUC to comply with federal law and allow PG&E to
11 recover in its retail rates the wholesale electricity costs it incurred in meeting its state-
12 imposed obligation to serve its customers. If PG&E succeeds on its claims as pleaded, that
13 lawsuit ultimately could bring billions of dollars into PG&E's bankruptcy estate through
14 increased retail rate revenues. Heller Ehrman also has provided bankruptcy-related advice
15 and services to PG&E as an adjunct to its other services.⁶

16 8. Consistent with the Court's Guidelines for Compensation of Professionals (the
17 "Fee Guidelines"), Heller Ehrman's services have been recorded under 22 separate internal
18 matter numbers. Billing statements for each of those matters are attached to the
19 accompanying Time Records Exhibit. The billing statements set forth for each matter, *inter*
20 *alia*, the total number of hours of services recorded by each attorney and paralegal, that
21 person's discounted hourly billing rate to PG&E, and the fees requested for those services.
22 A narrative description of each of those matters follows.

23 V. NARRATIVE DESCRIPTION OF SERVICES

24 9. **Matter No. 21: City of Santa Cruz. Hours spent: .50; fees sought: \$139.50;**
25 **expenses sought: \$31.20.** This matter is used to record time billed in providing legal

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27 ⁶ See June 4, 2001 Order at p. 2 (authorizing Heller Ehrman to provide "bankruptcy-
28 related legal services as an adjunct to the other legal services to be performed by Heller
Ehrman").

1 advice to PG&E in connection with a lawsuit filed against PG&E by the City of Santa Cruz,
2 on its own behalf and on behalf of certain other municipalities, regarding PG&E's alleged
3 underpayments for "franchise" arrangements between PG&E and the municipalities. As a
4 result of the instant bankruptcy filing by PG&E, the City of Santa Cruz action has been
5 stayed, and plaintiff has not moved for relief from the stay.

6 10. The law firm of Hoge Fenton Jones & Appel, Inc. is principal outside counsel for
7 PG&E in this matter. PG&E has asked Heller Ehrman to provide occasional supplemental
8 legal advice. During the Application Period, Heller Ehrman billed only a small amount of
9 time to this matter for advice relating to plaintiff's submission of a proof of claim in the
10 bankruptcy proceeding.

11 11. **Matter No. 45: Utility General Insurance Advice. Hours spent: 55.8; fees**
12 **sought: \$18,835.80; expenses sought: \$924.61.** This matter is used to record time billed
13 in connection with insurance advice and services provided by Heller Ehrman to PG&E.
14 This matter is separate from and independent of the *PG&E v. Lexington Insurance Company*
15 *et al.* insurance coverage action (Matter No. 11), which is subject to a separate contingent
16 fee agreement. *See supra* ¶ 4.

17 12. During the Review Period, Heller Ehrman provided advice concerning PG&E's
18 self-insured workers' compensation program; assisted PG&E in responding to a demand by
19 the California Department of Toxic Substances Control ("DTSC") to meet certain insurance
20 requirements for insolvent operators of hazardous waste facilities; provided advice
21 regarding third-party surety bond issues; and assisted PG&E in responding to a claim
22 against PG&E by an employee benefit program.

23 13. We anticipate providing additional services to PG&E in response to periodic
24 requests for insurance-related advice.

25 **Matter No. 54: Modesto Irrigation District v. Destec. Hours spent: 3.20; fees**
26 **sought: \$1,214.10; expenses sought: \$268.36.** This matter is used to record time billed
27 in providing legal advice to PG&E in connection with a lawsuit filed against PG&E by the
28 Modesto Irrigation District ("MID"), alleging that PG&E violated the antitrust laws by

1 refusing to accede to MID's request for interconnection service between PG&E's
2 transmission system and MID's facilities. The case was filed on August 3, 1998 and was
3 dismissed with prejudice on August 20, 1999. Plaintiff appealed the dismissal to the Ninth
4 Circuit Court of Appeals. Appellate briefing was concluded on March 31, 2000 and oral
5 argument was heard on the appeal on March 15, 2001. Thus, at the time that PG&E filed
6 the instant bankruptcy petition, the appeal had been fully briefed and argued and awaited
7 resolution by the Ninth Circuit. As a result of the bankruptcy filing by PG&E, the MID
8 action was initially stayed pursuant to the automatic stay provisions of Section 362(a) of the
9 Bankruptcy Code. The parties thereafter stipulated that plaintiff would seek relief from the
10 automatic stay for the limited purpose of resolving the appeal under submission in the Ninth
11 Circuit, including any rehearing requests or certiorari petitions. This Court granted
12 plaintiff's motion for relief from the stay on those terms and the Ninth Circuit ordered that
13 the case be resubmitted on August 3, 2001.

14 14. During the Application Period, PG&E asked Heller Ehrman to provide occasional
15 legal advice on issues pertaining to the legal proceedings and to PG&E's business dealings
16 in matters that relate to the legal proceedings. Heller Ehrman billed only a small amount of
17 time to this matter for such advice during the Application Period.

18 15. **Matter No. 63: California Market Failures — FERC Docket EL00-95 and**
19 **Related Dockets/Matters. Hours spent: 2,500.10; fees sought: \$633,462.70⁷; expenses**
20 **sought: \$44,030.69.** This matter is used to record time billed in connection with the
21 principal FERC proceeding addressing failures in the California electric market. That
22 proceeding, FERC Docket EL00-95, was brought on August 2, 2000, by San Diego Gas and
23 Electric Company ("SDG&E") against all sellers in the California wholesale electric
24 markets, seeking FERC intervention in the markets. PG&E intervened in the proceeding,
25 seeking reform of those markets, and monetary relief and refunds based on overcharges by

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27 ⁷ The fees sought reflect a reduction for certain paralegal fees as directed by the
28 Court's December 12, 2001 Order. If full paralegal fees are included, the amount of fees
sought would be \$640,437.70.

1 sellers.

2 16. Heller Ehrman has been retained since prior to the petition date to provide
3 extensive legal services to PG&E in connection with this proceeding. Heller Ehrman has
4 provided legal advice, research and strategy input; prepared and filed numerous briefs and
5 other papers; and appeared at hearings on behalf of PG&E. For example, Heller Ehrman
6 prepared extensive papers and advocated on PG&E's behalf concerning prospective price
7 mitigation relief affecting PG&E which has been the subject of FERC orders issued
8 November 1, 2000, December 15, 2000, April 26, 2001, June 19, 2001, and December 19,
9 2001, and a FERC technical conference in October 2001. Heller Ehrman has likewise
10 represented PG&E in seeking refunds for overcharges by sellers, submitting numerous
11 pleadings which led to refund orders issued by the FERC on July 25, 2001, and December
12 19, 2001. Heller Ehrman's efforts are designed to reduce costs for future wholesale power
13 purchases by PG&E, and to maximize PG&E's recovery of refunds from wholesale power
14 generators and marketers. A hearing process before an administrative law judge at the
15 FERC to establish precise refund amounts is continuing, and a trial, at which Heller Ehrman
16 will appear as counsel for PG&E, is expected in the early part of 2002.

17 17. PG&E has been and will continue to be an active participant in numerous other
18 proceedings related to FERC Docket ER00-95, in which Heller Ehrman has been retained to
19 provide legal services. For example, Heller Ehrman has prepared and submitted pleadings
20 on PG&E's behalf responding to filings by the California Independent System Operator
21 Corporation ("ISO") (the entity responsible for overseeing the transmission grid in
22 California and procuring wholesale electricity in "real time" where necessary to meet
23 demand) affecting PG&E's interests. Heller Ehrman also has been retained to challenge
24 efforts by certain sellers that serve the California markets to obtain FERC renewals of
25 authority to sell wholesale power at market-based rates or to otherwise ensure that such
26 sellers are not permitted to charge unreasonable rates in the future. In addition, Heller
27 Ehrman has been retained to represent PG&E as an intervenor in a number of federal Circuit
28 Court of Appeals proceedings seeking review of orders in FERC Docket EL00-95 and

1 related dockets, and anticipates representing PG&E in any federal Circuit Court of Appeals
2 petitions for review filed by PG&E concerning FERC's orders in these proceedings.

3 18. We anticipate providing extensive continuing legal services to PG&E in this
4 matter.

5 19. **Matter No. 64: Federal Filed Rate Case. Hours spent: 2,112.40; fees sought:**
6 **\$528,847.40⁸; expenses sought: \$39,668.94.** This matter is used to record time billed in
7 providing legal advice and representation to PG&E in a lawsuit filed by PG&E against the
8 Commissioners of the CPUC. The lawsuit seeks to require the CPUC to comply with
9 federal law and allow PG&E to recover in its retail rates the wholesale electricity costs it
10 incurred in meeting its state-imposed obligation to serve its customers. The lawsuit stems
11 from the electricity market crisis that started in June 2000, when the wholesale cost of the
12 electricity that PG&E purchased for delivery to its retail customers experienced
13 unanticipated and massive increases. Although PG&E's wholesale costs rose dramatically,
14 PG&E's retail rate revenues were frozen pursuant to AB 1890, California's electricity
15 market restructuring statute. Between June 2000 and March 31, 2001, PG&E's wholesale
16 costs exceeded the amounts available in PG&E's frozen retail rates to pay for such costs by
17 approximately **\$9.2 billion**. As a result of the CPUC's refusal to allow PG&E to recover its
18 wholesale costs in retail rates, PG&E amassed crippling debt, ultimately leading PG&E to
19 file the instant bankruptcy petition on April 6, 2001.

20 20. PG&E retained Heller Ehrman in the summer of 2000 to analyze the legal issues
21 and prepare litigation to challenge the CPUC's actions denying recovery to PG&E of its
22 ever-mounting wholesale electricity costs. In November 2000, Heller Ehrman filed a
23 lawsuit on PG&E's behalf in the United States District Court for the Northern District of
24 California alleging that under well-established principles of federal preemption, including
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27 ⁸ The fees sought reflect a reduction for certain paralegal fees as directed by the
28 Court's December 12, 2001 Order. If full paralegal fees are included, the amount of fees
sought would be \$543,259.60.

1 the "filed rate doctrine,"⁹ and other legal theories PG&E is entitled to recover its wholesale
2 transmission and power purchase costs in its retail rate revenues. That case, *PG&E v. Lynch*
3 *et al.*, Civil Action No. C 00 4128 (SBA) (N.D. Cal.), subsequently was transferred to the
4 United States District Court for the Central District of California, where a virtually identical
5 lawsuit by Southern California Edison Company was pending. PG&E filed an amended
6 complaint in the United States District Court for the Central District of California on
7 February 15, 2001, entitled *PG&E v. Lynch et al.*, Civil Action No. CV 01-1083-RSWL
8 (SHx) (C.D. Cal.).

9 21. Heller Ehrman provided legal representation to PG&E in prosecuting that lawsuit,
10 including consultation and advice, preparing and filing pleadings and motion papers,
11 appearances at court hearings and preparing for potential discovery.

12 22. On May 2, 2001, the court dismissed PG&E's lawsuit on ripeness grounds
13 without prejudice to refile. On August 6, 2001, Heller Ehrman refiled PG&E's lawsuit
14 against the CPUC Commissioners in the United States District Court for the Northern
15 District of California. That lawsuit, *PG&E v. Lynch, et al.*, Case No. C 01-03023 VRW
16 (N.D. Cal.) (the "Filed Rate Lawsuit"), currently is pending before the Hon. Vaughn R.
17 Walker.

18 23. During the Application Period, Heller Ehrman provided a wide range of legal
19 services to PG&E in its role as outside counsel representing PG&E in litigating its claims
20 against the CPUC Commissioners in the Filed Rate Lawsuit. Heller Ehrman prepared a new
21 complaint for filing in the United States District Court for the Northern District of
22 California; conducted extensive legal research and analysis regarding PG&E's claims;
23 prepared briefing in opposition to the motions to dismiss filed by the CPUC Commissioners,
24 an intervenor and two amici curiae; communicated extensively with PG&E regarding
25

26 ⁹ Under the "filed rate doctrine," a wholesale rate paid by a utility pursuant to a
27 federally-approved tariff is binding on a state utilities commission for retail rate-setting
28 purposes, and a state must allow a utility to recover in its retail rates the wholesale costs
paid by the utility pursuant to the federally-approved tariff.

1 strategy issues; monitored developments in other cases and in the energy industry bearing
2 on PG&E's claims; met and conferred with counsel for the CPUC; and prepared for
3 discovery and a case management conference.

4 24. Heller Ehrman anticipates significant additional work on the Filed Rate Lawsuit
5 in the coming months, including representing PG&E in an oral argument before Judge
6 Walker (currently scheduled for January 31, 2002) on the CPUC Commissioners' and
7 intervenor's motion to dismiss; briefing other issues; case management proceedings;
8 engaging in discovery; conducting legal research and analysis; and providing advice and
9 counseling to PG&E with respect to the litigation.

10 25. **Matter No. 66: Claims re Missing London Markets. Hours spent: 2.10; fees**
11 **sought: \$831.60; expenses sought: \$0.** This matter is an offshoot of the *PG&E v.*
12 *Lexington Insurance Company* insurance coverage case, Matter No. 11. Matter No. 11,
13 itself, is subject to a separate contingent fee agreement. *See supra* ¶ 3. Matter No. 66 is
14 used to record time billed in assisting PG&E in obtaining recovery from its London broker
15 under London market insurance policies that PG&E was unable to identify. Heller Ehrman
16 coordinates with English counsel retained by PG&E.

17 26. **Matter No. 67: Creditworthiness Docket — FERC Docket ER01-889. Hours**
18 **spent: 91.70; fees sought: \$35,929.80; expenses sought: \$8.08.** This docket addresses,
19 among other things, the issue of whether PG&E may be held liable for electricity procured
20 for PG&E's customers after PG&E no longer had the financial resources to assure that it
21 could pay for such power. In January 2001, PG&E became uncreditworthy under existing
22 tariffs, necessitating that an alternative buyer be found to procure power for PG&E's
23 customers. At about the same time, the California Department of Water Resources
24 ("DWR") was empowered to purchase power on behalf of California's cash-deprived
25 utilities. This proceeding specifically involves a January 4, 2001, filing by the ISO to
26 amend its FERC tariff to relax the creditworthiness provisions so that certain entities,
27 including PG&E, could continue buying electric power from third parties despite the fact
28 that those entities do not meet the tariff's creditworthiness requirements. FERC refused to

1 amend the tariff, leaving in place a requirement that power purchases must be made by a
2 creditworthy entity. In a series of subsequent orders, culminating in an order on
3 November 7, 2001, FERC issued clarifications and ordered that DWR, not PG&E, should be
4 billed for any third-party power transactions on or after January 17, 2001.

5 27. Heller Ehrman has been retained since prior to the petition date to represent
6 PG&E in connection with the FERC creditworthiness proceedings. During the Application
7 Period, Heller Ehrman has provided legal advice and filed papers on PG&E's behalf in
8 those proceedings. Heller Ehrman's efforts are intended, *inter alia*, to prevent PG&E from
9 being forced to spend money that otherwise would accrue to the estate.

10 28. The California ISO has filed a petition in the United States Court of Appeals for
11 the D.C. Circuit for review of several FERC orders in this docket, and DWR has challenged
12 FERC's orders in requests for rehearing filed at FERC. Numerous other parties also have
13 challenged FERC's actions in this docket. Heller Ehrman is representing PG&E at FERC
14 and in the Court of Appeals in connection with these issues. We anticipate performing
15 additional work for PG&E as these matters proceed.

16 29. **Matter No. 68: Qualifying Facility ("QF") Proceedings/Issues. Hours spent:**
17 **51.70; fees sought: \$16,177.50; expenses sought: \$60.96.** PG&E obtains a certain
18 amount of its wholesale electricity from so-called qualifying facilities ("QFs"), companies
19 with which PG&E has legally-mandated and regulated long-term power purchase contracts.
20 Since December 2000, FERC has issued a number of orders relating to QF contracts in light
21 of the California electricity crisis.

22 30. Heller Ehrman has been retained since prior to the petition date to provide legal
23 advice and representation to PG&E regarding QF matters pending at FERC, with the aim of
24 protecting PG&E's rights vis-à-vis QFs to ensure maximum availability of electricity for
25 delivery to retail customers.

26 31. Heller Ehrman has provided broad assistance to PG&E on QF matters. For
27 example, Heller Ehrman has represented PG&E in connection with a FERC order granting
28 waivers to QFs, potentially affecting the operation of QFs that had contracted to sell their

1 output to PG&E; filings by certain QFs for authorization to sell power to parties other than
2 PG&E in derogation of existing contracts; motions brought at FERC by QFs seeking relief
3 from California Public Utility Commission decisions concerning the rates to be paid to QFs
4 by utilities such as PG&E; a FERC Notice of Opportunity for Comment on Motions for
5 Emergency Relief and Institution of a Section 210(d) Proceeding; a FERC order granting in
6 part QFs' motions for emergency relief; and interconnection issues raised by FERC; and
7 research and advice regarding the impact of PG&E's bankruptcy case on certain of its QF
8 relationships and clients. Heller Ehrman also has been retained to represent PG&E in
9 litigation and negotiation with QFs in other fora, including the CPUC and this Court.

10 32. We anticipate providing further assistance to PG&E in the coming months in
11 connection with various proceedings involving QF issues.

12 33. **Matter No. 69: CPUC v. El Paso — FERC Docket RP00-241. Hours spent:**
13 **1,288.70; fees sought: \$342,035.00¹⁰; expenses sought: \$9,657.46.** This matter is used to
14 record time billed in representing PG&E in a complex FERC proceeding commenced by the
15 CPUC against El Paso Natural Gas Company and its affiliate, El Paso Merchant Energy,
16 alleging that their exercise of market power improperly increased natural gas prices at the
17 California border. Natural gas is used to power a significant amount of electricity
18 generation in California, and high natural gas prices were one cause of the increase in
19 wholesale electricity prices starting in the summer of 2000. As a purchaser of wholesale
20 electricity and as a direct purchaser of natural gas, PG&E has been affected by high natural
21 gas prices and therefore participates in this proceeding.

22 34. Heller Ehrman was retained before the petition date to provide a full range of
23 legal services to PG&E in this matter, including acting as trial counsel. During the
24 Application Period, Heller Ehrman represented PG&E as trial counsel in hearings at FERC,
25 and prepared initial briefs, reply briefs and, following issuance of an Initial Decision on

26
27 ¹⁰ The fees sought reflect a reduction for certain paralegal fees as directed by the
28 Court's December 12, 2001 Order. If full paralegal fees are included, the amount of fees
sought would be \$343,010.90.

1 October 9, 2001, briefs on and opposing exceptions. Heller Ehrman also has provided legal
2 advice and prepared additional regulatory filings to protect PG&E's interests.

3 35. Pursuant to a December 19, 2001, order on remand issued by the FERC,
4 additional hearings will be held in this proceeding to develop a portion of the record further.
5 A prehearing conference will be scheduled in January 2002. We anticipate performing
6 additional services for PG&E on this matter.

7 36. **Matter No. 70: El Paso Capacity-Related Complaints — FERC Dockets**
8 **RP01-484 & RP01-486. Hours spent: 4.60; fees sought: \$1,297.80; expenses sought:**
9 **\$17.76.** Heller Ehrman has been retained to provide representation to PG&E in connection
10 with complaints filed at FERC as an outgrowth of the CPUC v. El Paso proceeding (*see*
11 *supra*, Matter No. 69). Two such complaints have been filed alleging that El Paso Natural
12 Gas Company failed to maintain capacity on its system adequate to serve its contracted firm
13 load. The complaint in Docket No. RP01-484 was filed by a number of shippers to
14 California. PG&E is one of the complainants. The second complaint was filed by
15 customers that receive service from El Paso Gas Company in Texas, New Mexico and
16 Arizona. PG&E filed an intervention in the second complaint and urged consolidation of
17 the two proceedings.

18 37. During the Application Period, Heller Ehrman has provided legal advice with
19 respect to both proceedings (both of which commenced after the petition date). The
20 complaints are pending before FERC. We anticipate additional work on these and possibly
21 other related matters in the coming months.

22 38. **Matter No. 71: Order 637 Compliance Filing and Related Complaints —**
23 **FERC Dockets RP99-507, RP00-139, RP00-336. Hours spent: 13.40; fees sought:**
24 **\$4,415.40; expenses sought: \$18.00.** This matter reflects legal advice to and
25 representation of PG&E in connection with a technical conference proceeding at FERC to
26 address El Paso Natural Gas Company's Order No. 637 compliance filing and related
27 complaints. El Paso's compliance filing bears on El Paso's deliveries of natural gas on its
28 pipeline system and affects PG&E's interests.

1 39. During the Application Period, Heller Ehrman principally provided legal advice
2 to PG&E. Heller Ehrman was retained to represent PG&E in these proceedings prior to the
3 petition date, although our involvement became active only with the commencement of
4 technical conference proceedings in July 2001.

5 40. These proceedings remain pending at FERC. We anticipate being called on to
6 continue our work for PG&E on these proceedings in the months to come. The scope and
7 timing of any future work will depend in large part on FERC actions.

8 **41. Matter No. 72: Transwestern Pipeline Co. — FERC Docket RP97-288.**
9 **Hours spent: 27.60; fees sought: \$6,729.20¹¹; expenses sought: \$818.40.** On July 26,
10 2001, FERC commenced a proceeding to determine whether rate filings by Transwestern
11 Pipeline Company violated FERC regulations and policy, contributing to high natural gas
12 prices in California. PG&E has retained Heller Ehrman to provide legal advice, submit
13 briefing as necessary, and appear at hearings in this proceeding, in which PG&E is
14 interested as a purchaser of wholesale electricity whose cost is affected by natural gas
15 prices, and as a direct purchaser of natural gas.

16 42. PG&E has assumed an inactive, monitoring role in this proceeding. During the
17 Application Period, Heller Ehrman monitored and kept PG&E apprised of developments.
18 Briefing in this proceeding has been completed. Other than providing an analysis to PG&E
19 of the final FERC action, we anticipate that there will be little additional work related to this
20 matter.

21 **43. Matter No. 73: Other FERC Gas Dockets/Matters. Hours spent: .30; fees**
22 **sought: \$99.90; expenses sought: \$0.** This matter is used to record time billed in
23 providing advice and assistance on natural gas-related proceedings at FERC not accounted
24 for in other matters. Heller Ehrman has been retained since prior to the petition date to act
25 as regulatory counsel for PG&E on a range of issues relating to natural gas proceedings at

26
27 ¹¹ The fees sought reflect a reduction for certain paralegal fees as directed by the
28 Court's December 12, 2001 Order. If full paralegal fees are included, the amount of fees
sought would be \$7,170.90.

1 FERC. During the Application Period, Heller Ehrman provided PG&E with general FERC-
2 related advice, including advice as to whether PG&E should intervene, comment on, or
3 otherwise participate in FERC proceedings affecting its interests.

4 **44. Matter No. 74: Seller/Generator Issues. Hours spent: 9.30; fees sought:**
5 **\$3,626.90; expenses sought: \$0.** This matter is used to record time billed in providing
6 advice to PG&E concerning the role of third parties in the California electricity market
7 crisis, including potential claims for recovery of money or other relief that might be brought
8 against such third parties. Heller Ehrman has been retained to provide such services since
9 prior to PG&E's bankruptcy filing. This engagement arises in part in connection with the
10 instant bankruptcy case and also includes issues that currently do not pertain to any
11 particular lawsuit or regulatory docket.

12 **45.** Heller Ehrman's work on such matters has ranged from participation in meetings
13 with consultants and other counsel, to providing ongoing legal advice and counseling on
14 various issues. For example, Heller Ehrman has engaged in extensive discussions with
15 PG&E attorneys and other counsel for PG&E regarding potential claims that might be
16 brought against third parties in connection with the California electric power market crisis.
17 Heller Ehrman also has analyzed and provided advice regarding the relationship of such
18 potential claims to PG&E's Filed Rate Lawsuit (*see* narrative description of Matter 64,
19 *supra*) and to PG&E's bankruptcy case. Heller Ehrman has worked extensively with
20 consultants retained by PG&E in connection with such potential claims. Heller Ehrman also
21 has assisted PG&E in its efforts to obtain discovery relating to participation by generators
22 and marketers in California's PX and ISO markets.

23 **46.** We anticipate that PG&E will continue to rely on Heller Ehrman for advice on
24 these matters, and, if appropriate, to represent it or consult with other counsel in connection
25 with lawsuits or other actions involving third parties.

26 **47. Matter No. 76: CPUC Docket 01-03-082. Hours spent: 0.10; fees sought:**
27 **\$35.60; expenses sought: \$0.** This matter is used to record time billed in analyzing,
28 performing legal research, preparing memoranda, and providing advice to PG&E regarding

1 Decision 01-03-082 issued by the California Public Utilities Commission on March 27,
2 2001. That decision adopted certain retroactive regulatory accounting changes proposed by
3 The Utility Reform Network ("TURN"), a consumer advocacy group.¹² PG&E filed for
4 bankruptcy protection shortly after the decision was issued.

5 48. On April 19, 2001, PG&E (through counsel Howard Rice Nemerovski Canady
6 Falk & Rabkin) filed an application in this Court for a preliminary injunction to stay
7 enforcement of Decision 01-03-082.¹³ PG&E and the CPUC extensively briefed issues
8 relating to Decision 01-03-082 to the Court. On June 1, 2001, the Court denied PG&E's
9 preliminary injunction application, and PG&E appealed. The appeal currently is pending
10 before the Hon. Vaughn Walker of the United States District Court for the Northern District
11 of California.

12
13 ¹² Specifically, the decision involves the interaction between the Transition Revenue
14 Account ("TRA"), which was used to account for PG&E's revenues from the provision of
15 retail electric service and associated costs, including wholesale power procurement costs as
16 well as transmission and distribution costs, and the Transition Cost Balancing Account
17 ("TCBA"), which was used to account for so-called "stranded costs" or "transition costs,"
which are PG&E's historic investments in generation facilities and other past generation-
related costs that might become unrecoverable as a result of the introduction of competition
into the California retail market.

18 Decision 01-03-082 required PG&E to restate its TRA and TCBA balances by
19 recording the net revenues from PG&E's wholesale sales of electricity generated by
20 PG&E's retained generation facilities in the TRA rather than in the TCBA, as had
21 previously been the case, and then transferring the net balance in PG&E's TRA to its TCBA
22 on a monthly basis. The accounting changes are retroactive to January 1, 1998. The CPUC
23 found that, based on these accounting changes, the conditions for meeting the end of the
retail rate freeze had not been met, and refused to raise PG&E's retail rates sufficiently to
allow PG&E to recover its undercollected wholesale costs.

24 ¹³ PG&E alleged therein that the CPUC's Decision No. 01-03-082 was designed as
25 an attempt to interfere with PG&E's preemption and other claims which are the subject of
26 the Filed Rate Lawsuit, and that the CPUC contended that Decision No. 01-03-082 would
27 have the effect of preventing PG&E from recovering billions of dollars in undercollected
28 wholesale power costs. PG&E further alleged that the CPUC's Decision No. 01-03-082 was
automatically stayed pursuant to 11 U.S.C. § 362(a)(1) and (a)(3), and that implementation
of Decision No. 01-03-082 threatened the assets of the bankruptcy estate and interfered with
the bankruptcy court's jurisdiction and therefore should be enjoined.

1 49. CPUC Decision 01-03-082 implicates numerous technical issues involving the
2 interplay of regulatory accounts used to track PG&E's costs and revenues in buying
3 wholesale electricity for its customers, selling electricity, disposing of assets, and other
4 matters. During the prior Application Period, Heller Ehrman performed extensive legal
5 services in analyzing the implications of Decision 01-03-082. During the instant
6 Application Period, Heller Ehrman performed minimal services on this matter

7 50. **Matter No. 77: CPUC OII Proceeding. Hours spent: 125.40; fees sought:**
8 **\$29,075.90¹⁴; expenses sought: \$1,200.99.** This matter is used to record time billed in
9 providing legal representation and advice to PG&E relating to an investigation commenced
10 by the CPUC regarding certain transactions between PG&E and its parent company, PG&E
11 Corporation. On April 3, 2001, the CPUC issued an "Order Instituting Investigation"
12 ("OII") directed to PG&E, PG&E Corporation, and other investor-owned utilities and their
13 holding companies, commencing an investigation to determine whether the utilities and their
14 respective holding companies "have complied with relevant statutes and Commission
15 decisions in the management and oversight of their companies." The OII stems from the
16 fact that the utilities, as part of the deregulation of the electric industry, changed their
17 corporate forms in the latter part of the 1990s to include a CPUC-regulated utility company
18 and an unregulated holding company.

19 51. The OII purports to investigate the payment of dividends by the regulated utilities
20 to their respective corporate parents, the alleged failure of the corporate parents to extend
21 additional capital funding to their regulated utility subsidiaries, the parent corporations'
22 funding of unregulated subsidiaries, and other corporate transactions. The OII claims to be
23 investigating whether these actions have violated CPUC orders and policies, to determine
24 whether additional rules, conditions, or changes are required in the applicable provisions
25 governing these matters.

26
27 ¹⁴ The fees sought reflect a reduction for certain paralegal fees as directed by the
28 Court's December 12, 2001 Order. If full paralegal fees are included, the amount of fees
sought would be \$29,835.90.

1 52. During the Application Period, Heller Ehrman has provided advice and
2 consultation to PG&E, performed legal research, and assisted in PG&E's response to
3 demands for production of documents and testimony. Significant specific projects have
4 included preparing an opposition to a motion to compel by the CPUC's Office of Ratepayer
5 Advocates ("ORA"); conducting an extensive document review project; and assisting in
6 preparing objections to a proposed draft decision by an Administrative Law Judge. We
7 anticipate that the OII will include an evidentiary hearing before the CPUC sometime within
8 the next six to nine months, and that Heller Ehrman will assume a larger role as the time for
9 hearing nears.

10 **53. Matter No. 78: Other CPUC and California State Law Matters. Hours**
11 **spent: 248.30; fees sought: \$74,351.00; expenses sought: \$3,441.16.** This matter
12 records services in providing legal advice to PG&E in connection with CPUC regulatory
13 proceedings and orders other than those specified above, and California legislation affecting
14 PG&E's interests. Heller Ehrman has been retained to provide such services since prior to
15 PG&E's bankruptcy filing. This matter pertains to a number of specific CPUC dockets, and
16 also includes advice that does not correspond to any particular lawsuit or regulatory docket.

17 54. Heller Ehrman's work on such matters has encompassed legal advice and
18 counseling on a wide range of issues, most of which are ongoing; consulting on tactical and
19 strategic approaches in proceedings before the CPUC; and providing revisions and
20 comments on court and CPUC pleadings and other documents. For example, Heller Ehrman
21 was asked to prepare an extensive analysis of ABX-6, a California statute that affects the
22 regulatory and rate treatment of the electric generation assets owned by PG&E. Heller
23 Ehrman also was asked to review and comment on a number of draft regulatory and judicial
24 filings that in part address ABX-6 and its potential impact on PG&E. On other occasions,
25 Heller Ehrman has been asked to provide advice related to CPUC regulatory proceedings
26 involving the so-called California Procurement Adjustment ("CPA"). In general terms, the
27 CPA is a component of PG&E's rates added by the California Legislature in response to the
28 energy crisis to recover the costs of the State's purchases of power on behalf of PG&E's

1 customers. As with ABX-6, Heller Ehrman has been asked to review and comment on a
2 number of draft regulatory and judicial filings that in part address CPA. Heller Ehrman also
3 has been asked to provide advice and to review and comment on draft regulatory filings
4 regarding the CPUC's ratemaking for PG&E's Utility Retained Generation ("URG") assets.
5 From time to time, Heller Ehrman also has assisted PG&E with regard to other state
6 legislative and regulatory issues, including: CPUC proceedings pertaining to the planned
7 construction of proposed new transmission facilities by PG&E; DWR's procurement of
8 electric power on behalf of PG&E's retail customers; and CPUC proceedings pertaining to
9 the mechanisms by which DWR's costs are quantified and recovered through PG&E's
10 billings to its retail customers.

11 55. We anticipate that PG&E will continue to call on Heller Ehrman for advice in
12 connection with the foregoing matters, as well as future regulatory or legislative actions,
13 although we cannot predict in advance the nature or extent of such future matters or
14 services.

15 56. **Matter No. 79: Other Advice, Consultation, Research re Energy Issues.**
16 **Hours spent: 18.60; fees sought: \$8,003.10; expenses sought: \$0.36.** This matter is
17 used to record time billed for advice, consultation and research on energy issues not covered
18 by other matters. Prior to the Application Period, for example, Heller Ehrman's work on
19 this matter included consulting with PG&E regarding preparation of responses to requests
20 for information from California legislators. Heller Ehrman recorded minimal time to this
21 matter during the Application Period. We anticipate periodically being called upon to
22 continue to provide ongoing advice and consultation to PG&E on various energy-related
23 issues.

24 57. **Matter No. 80: CPUC Prudence Review. Hours spent: 515.30; fees sought:**
25 **\$150,694.30¹⁵; expenses sought: \$3,114.33.** This matter is used to record time billed in
26

27 ¹⁵ The fees sought reflect a reduction for certain paralegal fees as directed by the
28 Court's December 12, 2001 Order. If full paralegal fees are included, the amount of fees
sought would be \$152,264.30.

1 providing legal services to PG&E in connection PG&E's 2001 Annual Transition Cost
2 Proceeding ("ATCP") currently ongoing before the CPUC, as well as other anticipated
3 future CPUC proceedings, which address the reasonableness of PG&E's generation and
4 procurement practices and PG&E's recovery of billions of dollars in procurement and
5 generation-related costs.

6 58. During the Application Period, PG&E has provided oral and written advice to
7 PG&E regarding the factual and legal issues that have arisen in the CPUC proceedings
8 described above; has assisted with development of evidence relevant to such proceedings;
9 and has assisted with the preparation of written testimony, motions and other pleadings filed
10 with the CPUC in the ATCP proceeding.

11 59. The ATCP proceeding is scheduled for additional presentation of testimony,
12 hearing and briefing in 2002, and Heller Ehrman will continue to assist PG&E in those
13 activities. We thus anticipate providing extensive ongoing services to PG&E in connection
14 with the foregoing proceedings.

15 **60. Matter No. 81: Ancillary Bankruptcy Services Related to Other Matters,**
16 **and Administration. Hours spent: 168.50; fees sought: \$58,045.30¹⁶; expenses sought:**
17 **\$1,636.86.** The fees reflected in this matter encompass services relating to PG&E's Chapter
18 11 case, typically involving the interrelationship between the bankruptcy case or bankruptcy
19 law and Heller Ehrman's services or expertise in the primary areas for which it was engaged
20 as Special Counsel. More specifically, services recorded in this matter include:

21 a. Advice and consultation with PG&E or its other counsel pursuant to
22 specific request by PG&E regarding pending or contemplated litigation in the Chapter 11
23 case, particularly litigation involving claims or subject matters related to the other matters
24 for which Heller Ehrman is or may be retained;

25 b. Advice and consultation with PG&E or its other counsel pursuant to
26

27 ¹⁶ The fees sought reflect a reduction for certain paralegal fees as directed by the
28 Court's December 12, 2001 Order. If full paralegal fees are included, the amount of fees
sought would be \$59,245.30.

1 specific request by PG&E regarding litigation or bankruptcy strategy affecting other matters
2 for which Heller Ehrman is or may be retained, or as to which Heller Ehrman's litigation,
3 regulatory or transactional expertise enables it to provide added value to the exercise,
4 particularly including advice on such matters bearing on the formulation of PG&E's plan of
5 reorganization or the content of the disclosure statement;

6 c. Advice to PG&E or internally within Heller Ehrman regarding the effect of
7 the bankruptcy filing and bankruptcy law on pending or contemplated litigation, transactions
8 or relationships within the scope of Heller Ehrman's engagement as Special Counsel;

9 d. Research, analysis and advice to PG&E regarding various bankruptcy law
10 issues or matters arising out of or related to litigation, regulatory or transactional matters for
11 which Heller Ehrman was retained as Special Counsel;

12 e. Monitoring developments in the Chapter 11 case and providing internal
13 communication and advice to Heller Ehrman's litigation, regulatory and transactional
14 lawyers regarding the bankruptcy case to facilitate their performance of their services as
15 Special Counsel in their non-bankruptcy areas of responsibility; and

16 f. Research, analysis and advice to PG&E on certain bankruptcy law issues
17 as a backup or second opinion to advice provided by PG&E's other counsel.

18 61. We anticipate being called upon to continue to provide ongoing advice and
19 consultation to PG&E on various matters, issues and questions in this area, but are unable to
20 predict the nature or scope of future services.

21 **62. Matter No. 82: Bankruptcy—Employment and Fee Applications. Hours**
22 **spent: 653.20; fees sought: \$184,400.00¹⁷; expenses sought: \$3,574.08.** During the
23 Application Period, the services and fees in this matter related primarily to Heller Ehrman's
24 preparation of its First Interim Fee Application and four monthly Cover Sheet Applications.
25 Extensive work was required in connection with the First Interim Fee Application, in which

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27 ¹⁷ The fees sought reflect a reduction for certain paralegal fees as directed by the
28 Court's December 12, 2001 Order. If full paralegal fees are included, the amount of fees
sought would be **\$184,606.10**.

1 approximately \$2.3 million in fees and expenses were at issue. The Application involved
2 assembling and filing hundreds of pages of timesheets and other exhibits, preparing detailed
3 narrative descriptions of work performed, preparing for and participating in the hearing, and
4 responding to numerous objections by the United States Trustee through supplemental
5 filings and declarations. Preparation of Heller Ehrman's monthly Cover Sheet Applications
6 also has involved substantial time and effort.

7 63. A substantial portion of the time recorded in this category has been required by
8 the need to modify the manner in which Heller Ehrman non-bankruptcy professionals record
9 and categorize time entries, and to edit a number time entries initially made without
10 following the appropriate formats. In addition, in response to comments from the United
11 States Trustee in or about July 2001, Heller Ehrman agreed to establish a substantial number
12 of billing categories as separate billing "matters" among which services would be allocated.
13 Because those matters were not established at the outset of PG&E's Chapter 11 case, it was
14 necessary to reallocate time entries among the newly-established categories, a process which
15 occurred in the main during August and September 2001. As the time entries for November
16 2001 indicate, this editing and reallocation process should not recur as all timekeepers have
17 become more familiar and comfortable with the billing protocols required by the Court's fee
18 guidelines. Accordingly, though the fee amount sought in this category is substantial, it
19 reflects significant one-time transitional costs which should not be repeated in future
20 applications. Further, because this period included the first formal interim fee application,
21 there were substantial "start-up" costs associated with its preparation, and it is reasonable to
22 expect that future interim fee applications will involve less time and expense.

23 64. The majority of the fees recorded in Matter 82 during the Application period were
24 for services performed by Adam Cole and David Luster: Mr. Cole recorded 270.3 hours
25 with a time value of \$92,443, and Mr. Luster recorded 178.3 hours with a time value of
26 \$24,962. Mr. Cole, a shareholder, was assigned responsibility for managing the fee
27 application process, in large part because he has the lowest billing rate of all Heller Ehrman
28 shareholders working on the engagement. Mr. Luster, a senior paralegal, was assigned to

1 this task based on his comprehensive overall knowledge of the PG&E Matters, enabling him
2 to provide the most efficient support and assistance.

3 65. The fees sought in this category represent approximately 8.7% of the total fees
4 requested during the current application period. The fees sought in this category since the
5 inception of the case (*i.e.*, including for services in this category during the first fee
6 application period, from April 6 through July 31, 2001), represent approximately 5.2% of
7 the total fees sought by Heller Ehrman for services during the Chapter 11 case.

8 66. **Matter No. 83: Wayne Roberts v. PG&E. Hours spent: 82.80; fees**
9 **sought: \$26,077.80¹⁸; expenses sought: \$267.24.** This matter is used to record time billed
10 in representing PG&E with respect to a \$4 billion bankruptcy claim filed by Wayne Roberts
11 on behalf of himself and a purported class of electricity ratepayers. The Roberts claim, like
12 Richard D. Wilson v. Pacific Gas and Electric Company and PG&E Corporation (Matter
13 No. 65; no time billed during the Application Period), involves claims brought against
14 PG&E under California Business & Professions Code Sections 17200, *et seq.*, as a result of
15 certain inter-corporate actions, including dividend payments and an inter-company tax
16 agreement. Similar issues also are raised in the OII matter (Matter No. 77), discussed
17 above.

18 67. Heller Ehrman is coordinating with the Howard Rice firm, which also is
19 representing PG&E in this matter. We have been instructed to coordinate our respective
20 activities in order to provide PG&E with an effective joint representation with minimal
21 duplication of work. During the Application Period, Heller Ehrman conducted limited legal
22 research and analysis; commented and advised on drafts prepared by Howard Rice; and
23 assisting on strategy.

24 VI. SUMMARY OF FEES AND EXPENSES REQUESTED

25 68. The Firm billed a total of \$2,225,910.98 in fees and expenses during the

26
27 ¹⁸ The fees sought reflect a reduction for certain paralegal fees as directed by the
28 Court's December 12, 2001 Order. If full paralegal fees are included, the amount of fees
sought would be **\$26,092.80.**

Application Period.¹⁹ The total fees represent 7,973.60 hours expended during the Application Period. Those fees and expenses break down as follows:

Period	Fees	Expenses	Total
8/1/01-11/30/01	\$2,116,324.60 ²⁰	\$109,586.38	\$2,225,910.98 ²¹

69. Pursuant to the Order re Fee Applications ¶ 6, Heller Ehrman seeks allowance of interim compensation in the total amount of \$2,225,910.98 (\$2,250,826.98 if full paralegal rates are allowed).

70. To date, the Firm is not owed any amounts except those identified in the two immediately preceding paragraphs.

VII. REQUIRED DISCLOSURES AND CERTIFICATION

71. In this case, Heller Ehrman has not charged for expenses for: (a) office overhead; (b) secretarial overtime; (c) charges for after-hours and weekend air conditioning and other utilities; (d) cost of meals or transportation provided to attorneys and staff who work late; (e) word processing and similar clerical functions; and (f) amenities such as newspapers, shoe shines, dry cleaning, etc., and the cost of lunches while Heller Ehrman personnel are away from the office.

72. By agreement with PG&E, Heller Ehrman's in-house photocopy charges (regularly charged to other clients of the firm at 22¢ per page) have been reduced to 12¢ per page, and facsimiles have been charged at 75¢ per page for outgoing transmissions (regularly charged at \$1.50), with no charge for incoming transmissions.

73. Computerized legal research is billed at the standard Westlaw and LEXIS rates without markup or discount. Heller Ehrman receives a volume discount from Westlaw and LEXIS which is not allocable to any particular matter, and which Heller Ehrman does not

¹⁹ \$2,250,826.98 if full paralegal rates are used.

²⁰ \$2,142,087.50 if full paralegal rates are used.

²¹ \$2,250,826.98 if full paralegal rates are used.

1 attribute to any particular client, including PG&E.

2 74. Heller Ehrman believes that the regular hourly rates of the attorneys and
3 paralegals employed by Heller Ehrman for similar services of lawyers and paralegals of
4 reasonably comparable skill and reputation are consistent with those prevailing in the
5 various legal communities in which Heller Ehrman's attorneys and paralegals practice.
6 Heller Ehrman's compensation and expense reimbursement requested in this Application
7 have been billed at rates, in accordance with practices, more favorable than those
8 customarily employed by Heller Ehrman and generally accepted by Heller Ehrman's clients.
9 Pursuant to a Master Fee Agreement with PG&E, Heller Ehrman has agreed to apply a 10%
10 discount from regular hourly rates to the fees of all timekeepers working on the matters for
11 which compensation is sought herein, and to provide a significant additional billing
12 accommodation as described in the following paragraph.

13 75. Specifically, pursuant to the Master Fee Agreement between PG&E and Heller
14 Ehrman, Heller Ehrman has agreed to freeze for the first two years in the lifetime of a matter
15 the billing rates of shareholders working on that given matter at 90% of the shareholder's
16 rate in place when that matter is commenced. The rates of associates and paralegals are not
17 frozen at any time, but are charged at 90% of the rate in place when the work is performed.

18 76. Heller Ehrman has neither received nor been promised any compensation from
19 any source in connection with this case or its services to be performed herein, except
20 compensation and reimbursement of expenses to be allowed by this Court and paid from the
21 estate, pursuant to the applicable provisions of the Bankruptcy Code and Rules. To date,
22 Heller Ehrman has received no payments from any source for its fees and expenses in this
23 case, other than (a) those described in paragraph 2 above (\$3,695,324.57); (b) those
24 described in paragraph 3 above (\$153,615.61, applied to retainer); and (c) a refund of
25 \$7,395 and cancellation of a \$9,825.26 charge in connection with its contingent fee
26 engagement relating to insurance coverage matters (which are not the subject of this
27 Application).

28 77. Heller Ehrman has no agreement or understanding for sharing any fees or

1 expenses which Heller Ehrman may receive in this case with any person other than members
2 and associates of Heller Ehrman.

3 VIII. REQUEST FOR COMPENSATION

4 78. Heller Ehrman respectfully requests that the Court amend its December 12, 2001
5 Order to permit full compensation to Heller Ehrman for certain paralegal services in the
6 Application Period and thereafter, as follows:

7 a. Services performed by paralegals Nneka Nwosu and M. Brett Stone. In
8 the December 12, 2001 Order, the Court found that the resume of paralegal M. Brett Stone
9 "does not establish his credentials or professional experience sufficiently to convince the
10 court that his work should be billed at \$90 per hour." Order at p. 15, lines 9-12. Similarly,
11 the Court found that the resume of paralegal Nneka Nwosu "does not establish that she is
12 entitled to [be] billed as a paralegal." *Id.* at p. 16, lines 8-9. The Court reduced the allowed
13 compensation for services by Mr. Stone (normal billing rate: \$90 per hour) and Ms. Nwosu
14 (normal billing rate: \$113 per hour) to \$40 an hour. Attached in Exhibit B to the
15 accompanying Certification of Peter J. Benvenutti are revised resumes of Mr. Stone and Ms.
16 Nwosu providing additional detail establishing their qualifications as paralegals at Heller
17 Ehrman. We respectfully request that the Court amend its prior ruling regarding Mr. Stone
18 and Ms. Nwosu's compensable rates based on the qualifications shown in their
19 accompanying resumes, and authorize compensation at their full rates.

20 b. Compensation for File Management Services at Full Paralegal Rates. The
21 accompanying Certification of Peter J. Benvenutti (¶¶ 5-11) and Declaration of David R.
22 Luster (¶¶ 7-17) explain in detail the importance of file management in the 22 PG&E
23 matters that Heller Ehrman is handling for PG&E, and why, practicably, only paralegals,
24 rather than secretaries or other clerical staff, can perform file management functions.

25 Heller Ehrman further respectfully submits that compensation for file management
26 activities should be at full paralegal rates, rather than at the reduced rate of \$40 per hour
27 specified in the December 12, 2001 Order (p. 6). In the December 12, 2001 Order, the
28 Court authorized professionals retained by PG&E to request more than \$40 per hour in

1 compensation for personnel performing file management services if the professionals
2 "demonstrate[] to the satisfaction of the UST that the actual direct and indirect costs of
3 employing the personnel handling file management exceed \$40 an hour." December 12,
4 2001 Order at p. 6, lines 10-12. This Court further ordered that such submissions regarding
5 personnel costs were to be made with the United States Trustee, not filed with the Court,
6 and the professional was to certify to the Court that it has made such a showing. *Id.* at lines
7 12-22.

8 As certified in the accompanying Certification of Peter J. Benvenuti, Heller Ehrman
9 has submitted to the United States Trustee the Declaration of John R. Rich, Heller Ehrman's
10 Controller, and accompanying exhibits, which show that the actual costs to Heller Ehrman
11 of the paralegals performing work on PG&E matters approximate the actual billing rates of
12 those paralegals, and are well in excess of \$40 an hour. Heller Ehrman therefore requests
13 that compensation be authorized for the full billing rates of its paralegals performing file
14 management (and all other) services on PG&E matters.

15 c. Compensation for Reviewing and Routing Articles Regarding PG&E and
16 the California Energy Crisis. The December 12, 2001 Order (pp. 14-15) disallows any
17 compensation to Heller Ehrman for the time spent by its lead paralegal, David Luster, in
18 reviewing and routing articles regarding PG&E and the California energy crisis to lawyers
19 working on PG&E matters. The accompanying Declaration of David R. Luster (¶¶ 18-21)
20 explains in detail the complexity of this news gathering process and why it is necessary for
21 trained personnel, such as a paralegal, to perform that task. (This function is now being
22 performed by Mr. Stone, who has a significantly lower hourly billing rate than Mr. Luster.)
23 Heller Ehrman respectfully requests that the Court amend its December 12, 2001 Order to
24 authorize compensation to Heller Ehrman for time spent by its paralegals in reviewing and
25 routing articles regarding PG&E and the California energy crisis to lawyers working on
26 PG&E matters.

27 79. Based on the foregoing, Heller Ehrman requests the Court to approve this
28 Application; to allow it fees and expenses on an interim basis in the respective amounts of

1 \$2,116,324.60 (\$2,142,087.50 if full paralegal rates are allowed) and \$109,586.38; and to
2 authorize PG&E to pay the allowed amounts forthwith.

3 80. Attached behind Tab 1 to the accompanying Time Records Exhibit and as Exhibit
4 A to the Certification of Peter J. Benvenuti ("Benvenuti Certification") is the name of each
5 professional who performed services in connection with the various matters described
6 herein during the period covered by this Application and the hourly rates for each such
7 professional on such matters; (b) attached behind Tab 2 to the Time Records Exhibit is a
8 summary of the fees and expenses, and additional information, for each matter; (c) attached
9 behind Tabs 5-26 to the Time Records Exhibit are the detailed time and expense statements
10 for the Application Period that comply with all Northern District of California Bankruptcy
11 Local Rules and Compensation Guidelines, the Guidelines of the Office of the United States
12 Trustee, and the Court's December 12, 2001, Memorandum Decision Regarding
13 Applications for Interim Compensation of Professionals; and (d) Exhibit B to the Benvenuti
14 Certification sets forth the qualifications and experience of all timekeepers for whom
15 compensation is sought.

16 81. The Firm has served a copy of this Application (without Exhibits) on the Special
17 Notice List in this case.

18 82. The interim compensation and reimbursement of expenses sought in this
19 Application is on account and is not final. Upon the conclusion of this case, the Firm will
20 seek fees and reimbursement of the expenses incurred for the totality of the services
21 rendered in the case. Any interim fees or reimbursement of expenses approved by this
22 Court and received by the Firm will be credited against such final fees and expenses as may
23 be allowed by this Court.

1 83. The Firm represents and warrants that its billing practices comply with all
2 Northern District of California Bankruptcy Local Rules and Compensation Guidelines and
3 the Guidelines of the Office of the United States Trustee, except as otherwise stated in the
4 Benvenuti Certification.

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6 Dated: January 14, 2002

Respectfully submitted,

7 HELLER EHRMAN WHITE & McAULIFFE LLP

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9 By: Marie L. Fiala

10 Marie L. Fiala
11 Special Counsel for Debtor in Possession
12 PACIFIC GAS AND ELECTRIC COMPANY
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