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PACIFIC GAS and ELECTRIC COMPANY

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re
PACIFIC GAS and ELECTRIC
COMPANY, a California Corporation,

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

Chapter 11
Case No. 01-30923 DM

SECOND INTERIM APPLICATION FOR
COMPENSATION AND EXPENSE
REIMBURSEMENT BY COOLEY GODWARD LLP,
SPECIAL COUNSEL
(August 1, 2001 through November 30, 2001)

Date: February 26, 2002
Time: 9:30 a.m.
Place: 235 Pine Street, 19th Floor
San Francisco, CA 94104
Judge: Dennis Montali

TO THE HONORABLE DENNIS MONTALI, UNITED STATES BANKRUPTCY JUDGE:

Pursuant to the Court's Order Establishing Interim Fee Application and Expense Reimbursement dated July 26, 2001, as amended on November 8, 2001 ("Interim Fee Order"), Sections 330 and 331 of Title 11 of the United States Bankruptcy Code ("Bankruptcy Code"), Rule 2016 of the Federal Rules of Bankruptcy Procedures, and the Bankruptcy Local Rules for the Northern District of California, Cooley Godward LLP, special counsel for debtor Pacific Gas and Electric Company ("Debtor") files this Second Interim Application for Compensation and Expense Reimbursement ("Application") and respectfully represents:

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COOLEY GODWARD LLP
ATTORNEYS AT LAW
SAN FRANCISCO

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1.

50-275/323

I. INTRODUCTION

1. Debtor: On April 6, 2001 ("Petition Date"), Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code.

2. Employment: On May 8, 2001 and as amended on September 13, 2001, the Court authorized the Debtor to employ the law firm of Cooley Godward LLP ("Applicant"), as its special counsel herein ("Employment Order"), effective as of the Petition Date. A copy of the Employment Order is attached as Exhibit A to the Declaration of Martin S. Schenker in Support of Cooley Godward LLP's Second Interim Application for Compensation and Expense Reimbursement ("Schenker Declaration").

3. Prior Compensation: On or about October 23, 2001, the bankruptcy Court approved Applicant's First Interim Application for Compensation and Expense Reimbursement (April 6, 2001-July 31, 2001). Pursuant to that order Applicant was paid by the Debtor \$294,349.00 in fees and reimbursed the sum of \$10,856.04 in expenses. In addition to those amounts and in conformity with the Interim Fee Order, through January 14, 2002, Applicant has been paid the additional sum of \$657,429.11, representing 85% of fees incurred from August 1, 2001 through October 30, 2001 and reimbursed approximately \$49,648.95, representing 100% of expenses incurred from August 1, 2001 through October 30, 2001, with a hold back of \$116,016.89 ("Holdback"). Pursuant to the terms of the Interim Fee Order, Applicant has not yet received payment of fees and expenses for its November 2001 invoices.

4. Current Compensation: This is the Second Application for Interim Compensation and Expense Reimbursement ("Application"). By this Application, Applicant requests interim compensation in the amount of \$928,769.25¹ and expense reimbursement in the sum of \$52,714.20², which sums do not take into account the interim payments received pursuant to the Interim Fee Order as described above. During the course of representing the Debtor from August 1, 2001 through

¹ The total amount of fees is \$934,133.75. However, in compliance with the U.S. Trustee's Guidelines regarding Travel, Applicant has deducted \$5,364.50 (one-half of the Travel fee amount) from the total amount of fees and is requesting fees of \$928,769.25.

² The total amount of expenses is \$54,930.54. However, in compliance with U.S. Trustee's Guidelines regarding Word Processing, Applicant is deducting \$2,216.34 from the total amount of expenses and is requesting expenses of \$52,714.20.

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2.

Appl Add: Kids Ogc Mail Center

November 30, 2001 ("Second Interim Period"), Applicant performed the services described in this Application and the time summaries attached to the Schenker Declaration, and summarized in the statements set forth in Exhibits A and B attached to the "Time Records Exhibit for the Period August 1, 2001 to November 30, 2001 by Cooley Godward LLP, Special Counsel" (hereinafter, "Time Records Exhibit"). Applicant also incurred the actual and necessary expenses itemized in the attached expense itemization as set forth in Exhibits B and C attached to the Time Records Exhibit.

5. **Compliance with Guidelines:** As a general rule, Applicant's billing practices and hourly rates are identical for bankruptcy and non-bankruptcy clients. The expenses charged to bankruptcy clients are either identical to or less than the expenses charged to non-bankruptcy clients.

6. **2016 Compensation Statement:** Applicant has agreed not to share any compensation awarded with any other person and the source of any award authorized will be estate funds.

II. CURRENT SERVICES

A. Summary

The services rendered by Applicant during the Second Interim Period can be grouped into the categories set forth below.³ The attorneys and paraprofessionals who rendered services relating to each category are identified, along with the number of hours for each individual and the total compensation sought for each category, in Exhibit A attached to the Time Records Exhibit.

B. Case Administration

Applicant assisted the Debtor in monitoring certain aspects of the case as necessary to carry out its responsibilities as Special Counsel to the Debtor.

For its services related to the above services, Applicant spent 0.80 hours, incurring fees in the sum of \$88.00.

C. Fee/Employment Applications

Applicant reviewed and prepared its monthly fee statements, prepared, filed and

³ Applicant is assisting the Debtor in dealing with ongoing, highly sensitive and confidential matters. As a consequence, Applicant is unable to specify in great detail the services it is providing to the Debtor, as doing so could seriously compromise Debtor's future business and legal strategy. Applicant would be pleased to provide the Court with additional details of the services it is providing to the Debtor *in camera* or by some other mechanism that will ensure the maintenance of Debtor's confidential information.

served monthly Notice Cover Sheet Applications for the months of August, September, October and November 2001, reviewed applicable guidelines and orders in connection with this, adjusted and organized its monthly statements in accordance with such guidelines, collected documentation necessary for the Application, and began preparing this Application and the supporting verification.

For its services related to the above services, Applicant spent 119.60 hours, incurring fees in the sum of \$36,106.50 during the Second Interim Period.

D. Litigation

BFM Claim:

Applicant represents the Debtor in connection with Debtor's claims against the State of California arising from the State's seizure of wholesale electricity contracts, known as Block Forward Market Contracts ("BFM Contracts"). On or about January 31, 2001, Governor Gray Davis, acting pursuant to an earlier declaration of emergency, issued an Executive Order seizing the BFM Contracts from Debtor. These contracts gave Debtor the right to purchase electricity on various future dates at fixed prices. When the wholesale price of electricity skyrocketed in late 2000, the BFM Contracts entitled Debtor to purchase wholesale electricity at prices far below the then prevailing market prices and, as such, were valuable assets. In addition, the California Power Exchange (the "PX"), a non-profit corporation that until recently administered California's wholesale electricity market, along with various electricity generators that sold electricity into that market, claimed an interest in the BFM Contracts and also asserted claims in connection with the State's seizure of these contracts.

In March 2001, Debtor and the PX filed claims before the California Victim Compensation and Government Claims Board ("the Board"), an administrative forum that has the stated purpose of allowing the State an opportunity to investigate and settle claims prior to litigation. Subsequently, numerous electricity generators who were participants in the PX filed separate claims with the Board. At a May 18, 2001 hearing, the Board indicated it would reject the claims on the non-substantive ground that the claims were unduly complex and thus more appropriately litigated in Superior Court. Consequently, in July 2001, Debtor, the PX and one

electricity generator, Reliant Energy, filed separate inverse condemnation lawsuits. The Debtor estimates its damages related to the State's seizure of the BFM Contracts at not less than \$240,600,000.

In September 2001, the Board stated that it had elected not to reject the claims and indicated that it would proceed with the claims. Applicant assisted the Debtor in the preparation of a stipulation with PX, Reliant Energy and the State that the claims should be rejected and that the claimants had exhausted their administrative remedies. The Board rejected the stipulation and stated that it would proceed on certain, non-dispositive aspects of the claims. Debtor, the PX and certain of the electricity generators advised the Board that it was acting in excess of its jurisdiction by continuing the proceedings and engaging in certain other actions, such as authorizing the State to conduct discovery. After the Board indicated that it would proceed notwithstanding the parties' objections, Debtor and the PX filed a writ of mandate and request for a stay in Sacramento Superior Court. The Superior Court granted a temporary stay and a hearing on the writ of mandate is set for January 25, 2002.

In the meantime, the inverse condemnation lawsuits filed by the Debtor, the PX and Reliant Energy were the subject of a motion to coordinate filed by the PX. While the motion to coordinate was pending, the State filed a separate declaratory relief action in Sacramento Superior Court that also sought a determination regarding the inverse condemnation claims. All four actions have now been coordinated in Sacramento Superior Court.

Depending on the outcome of the hearing on Debtor's writ of mandate, the litigation concerning the BFM Contracts could take 18 to twenty-four months or longer to complete.

For its services related to the above services, Applicant spent 568.50 hours, incurring fees in the sum of \$167,362.50.

DWR Litigation:

In early 2001, the California Legislature passed and the Governor signed AB X1, which authorized the California Department of Water Resources ("DWR") to enter into contracts for the wholesale purchase of power and to resell that power directly to retail electric customers throughout the State. This new statutory regime (i) authorizes DWR to issue a "revenue requirement"

identifying, among other things, the amount of money needed to pay for its actual and projected electricity procurement costs; (ii) vests in DWR the California Public Utilities Commission's ("CPUC's") traditional authority to determine the whether procurement costs and charges are "just and reasonable"; and (iii) entitles DWR to recover its revenue requirement from California ratepayers.

On May 2, July 23 and August 7, 2001, DWR issued three separate revenue requirements, pursuant to which DWR intends to bind California ratepayers to repay billions of dollars of DWR's alleged power procurement costs. DWR issued these revenue requirements, and determined that they were "just and reasonable," without providing prior notice to interested parties, an opportunity to provide comments, or a public hearing on the reasonableness of the DWR's power purchase costs. If the DWR's revenue requirement is excessive, California ratepayers, including PG&E, will be forced to incur inflated electricity costs. To the extent that DWR's revenue requirement is not passed on to ratepayers in the form of higher overall retail electricity rates, an inflated revenue requirement will have the effect of diverting funds from Debtor to DWR.

Applicant performed services and advised the Debtor in connection with developing a strategic plan and analyzing Debtor's legal options with respect to the DWR revenue requirement. On August 21, 2001, Applicant filed in the Sacramento County Superior Court a Petition for Writ of Mandate Or, in the Alternative, Writ of Administrative Mandamus. This Petition sought a writ directing Respondent DWR and Thomas M. Hannigan, its Director, to vacate their decision determining DWR's revenue requirement to be just and reasonable.

On November 5, 2001, DWR issued the fourth iteration of its revenue requirement, which reduced the projection of DWR's power costs by more than \$3 billion. Notably, this reduction principally resulted from DWR's downward revisions to forecasts of future energy costs. Debtor's original petition had challenged these forecasts, alleging that "DWR has substantially overestimated the forecast cost of spot power and natural gas purchases, . . . result[ing] in an overstatement of DWR's revenue requirement for the remainder of 2001 and 2002 of roughly \$3.1 billion." This multi-billion reduction directly benefits Debtor by reducing the amount of funds that DWR's actions threaten to divert from Debtor. In its November 5 revenue requirement, however, DWR again refused to provide PG&E and others access to information regarding the reasonableness of DWR's power

contracts, any justification concerning the reasonableness of these contracts or any description of DWR's protocols for negotiating and entering into the contracts.

On December 5, Applicant filed an Amended Petition and Complaint. The Amended Petition seeks a writ directing Respondents DWR and Hannigan to vacate their decision determining DWR's November 5 revenue requirement to be just and reasonable, and directing them to comply with the Administrative Procedure Act and other applicable protections in any future decisions. The accompanying Complaint further seeks a judicial declaration that DWR's determination that its revenue requirement is "just and reasonable."

For its services related to the above services, Applicant spent 472.65 hours, incurring fees in the sum of \$160,434.50.

Section 851 Matter:

Applicant also represents the Debtor in proceedings that are currently pending before the CPUC. The proceedings relate to the Debtor's compliance with California Public Utilities Code Section 851, which requires that any public utility obtain approval from the CPUC before encumbering utility property that may be necessary to provide service to the public. CPUC General Order 69-C, however, permits a utility to grant a license, easement, or right of way for "limited uses" without CPUC approval under Section 851 as long as the license or easement contains certain specified conditions. There was a longstanding practice among utilities to grant revocable licenses for utility property under General Order 69-C pending approval of a sale or lease under Section 851. Until late 2000, the CPUC had approved such transactions without comment or concern. In late 2000 and early 2001, the CPUC issued multiple decisions that raised questions about the scope of the GO 69-C authorization.

On June 25, 2001 and July 26, 2001, the Debtor filed two applications for approval of transactions that resulted in an encumbrance of utility property. In the first application, the Debtor sought approval of three leases of utility property to CalPeak Power, LLC (the "CalPeak Matter"). CalPeak Power intended to build new electric generation facilities on the leased property. In the second application, the Debtor sought approval to grant two easements to Delta Energy, LLC (the "Delta Matter"). The easements were necessary to provide natural gas to a new

electric generation facility and to connect the new electric generation facility to the Debtor's Pittsburg substation. In the CalPeak and Delta Matters, the Debtor had granted a revocable license and right of entry to Delta Energy and CalPeak Power, respectively, for preliminary work on the projects prior to filing the application for approval of the easements and leases under Section 851. On August 23, 2001, the CPUC approved both applications, but also concluded that the Debtor may have violated Section 851 as well as certain CPUC rules and decisions by failing to seek approval of the transactions before granting access to the utility property. The CPUC, therefore, issued orders to show cause on the two applications.

The orders to show cause required the Debtor to produce essentially all documents relating to the CalPeak and Delta Matters within two weeks and appear at a hearing to show cause why the Debtor should not be subject to sanctions for allegedly violating Section 851 and other CPUC rules and decisions. The CPUC consolidated the two order to show cause proceedings and the Administrative Law Judge scheduled an evidentiary hearing for February 19, 2002 to determine whether any violation occurred and whether the Debtor should be subject to sanctions.

During the Second Interim Period, Applicant has spent substantial time and effort to defend Debtor in the order to show cause proceedings. First, as required by the orders to show cause, Applicant reviewed and prepared for production tens of thousands of pages of documents, most of which were single-page emails.⁴ Due to the nature of the documents requested by the CPUC, this document review required a painstakingly thorough and careful privilege review and preparation of extensive privilege logs. When completed, the Debtor produced thousands of documents and filed privilege logs in excess of 450 pages.

Second, Applicant prepared and filed motions to have the order to show cause proceedings re-categorized from "rate-setting proceedings" to "adjudicative proceedings."⁵ The

⁴ Because of the short time period within which to produce the documents, a thorough substantive review of the documents could not be completed at the same time as the privilege review. As discussed below, a more thorough substantive review of the documents occurred after the privilege review and production to the CPUC. In addition, the short time period for the production required significant staffing on the project.

⁵ Under Section 1701.1 of the Public Utilities Code, the CPUC must categorize each proceeding before it as either "quasi-legislative," "rate-setting," or "adjudicative." The type of proceeding determines the rules and procedures the CPUC must follow.

1 CPUC granted the motions, thereby affording the Debtor additional procedural safeguards.
2 Specifically, the re-categorization required the CPUC to provide a detailed specification of the
3 charges brought against the Debtor and all supporting evidence in advance of the hearing. In
4 addition, the re-categorization ensured that the CPUC would bear the burden of proof in the order
5 to show cause proceedings.

6 Third, Applicant prepared and filed Applications for Rehearing of the CPUC's
7 decisions on the Debtor's applications. Applicant was required to file the Applications for
8 Rehearing in order to preserve the right to seek a writ of review of the CPUC's decisions in the
9 California Court of Appeal. Cal. Pub. Util. Code § 1731(b). The Applications for Rehearing
10 required a review of all CPUC decisions interpreting or discussing General Order 69-C and
11 Section 851.

12 Fourth, Applicant initiated and is continuing a thorough factual investigation of the
13 alleged violations. The factual investigation has included a thorough review of tens of thousands
14 of documents, witness interviews, and visits to inspect the relevant properties. In addition to the
15 factual investigation, Applicant has also completed a significant amount of legal research to
16 develop various legal arguments in defense of the Debtor.

17 The services performed by Applicant on the 851 Matters during the Second Interim
18 Period have been necessary to defend the Debtor against the CPUC's efforts to collect significant
19 penalties. Although the CPUC has not yet articulated its position on sanctions in this case, in the
20 past the CPUC has relied on Public Utilities Code Section 2107 as a basis to sanction public
21 utilities. *See, e.g., Application for Authority Under Section 851 for Koch Pipeline Company, L.P.*
22 *to Sell Crude Oil Pipelines and Related Assets to EEOT Energy Pipeline*, 1999 Cal. P.U.C. LEXIS
23 498, *16-17 (Aug. 5, 1999).

24 In addition to the defense of the Debtor in the order to show cause proceedings,
25 Applicant has also advised the Debtor on numerous Section 851 compliance matters. As a result
26 of the recent CPUC decisions, which altered the permissible use of licenses and rights of way
27 under General Order 69-C, the Debtor reviewed its procedures and approach to Section 851
28 compliance. Applicant has provided advice on the interpretation of the recent CPUC decisions and

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1 on the need to seek approval of several types of transactions.

2 For its services related to the above services, Applicant spent 1037.95 hours, incurring
3 fees in the sum of \$262,484.25.

4 E. Business Operations

5 Applicant performed various services and advised Debtor in connection with
6 matters relating to the California energy markets and the government's response to the energy
7 crisis. In response to the energy crisis, the California Legislature has restructured California's
8 electric industry in numerous ways, including: the enactment of AB X1, which (as discussed
9 above) authorized the DWR to temporarily purchase power on the wholesale market and resell that
10 power directly to Debtor's customers and divested the CPUC of its traditional authority to
11 determine whether procurement costs are "just and reasonable"; and the enactment of AB 6X,
12 which barred public utilities, including Debtor, from disposing of electric generation facilities prior
13 to January 1, 2006 and provided that such generation assets "remain dedicated to service for the
14 benefit of California ratepayers." The CPUC also continues to play an integral role in California's
15 restructured electricity markets. The manner in which this restructured market is implemented will
16 have an enormous financial effect on Debtor.

17 Applicant performed services and advised the Debtor in connection with developing
18 a strategic plan and analyzing Debtor's legal options with respect to the DWR revenue
19 requirement; a related rate agreement between DWR and CPUC, the recent Legislative enactments
20 and other facets of the restructured electricity market. To date, Debtor has not, except for the
21 litigation described above, commenced any litigation in connection with these potential claims.

22 Applicant also performed services and advised Debtor in connection with structuring
23 the relationship between the various components of Debtor that would be disaggregated and spun off
24 as part of Debtor's Plan of Reorganization. Specifically, Applicant provided preliminary advice to
25 Debtor's personnel responsible for managing Debtor's power distribution assets on the process by
26 which these assets could emerge as a stand alone company from a corporate contracts, corporate
27 governance and corporate securities perspective.

28 For its services related to the above services, Applicant spent 919.40 hours, incurring

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fees in the sum of \$296,894.00.

F. Plan and Disclosure Statement

Applicant has spent a *de minimus* amount of time monitoring the status of a Plan and Disclosure Statement.

For its services related to the above services, Applicant spent 0.10 hours, incurring fees in the sum of \$35.00 during the Second Interim Period.

G. Travel

Various of Applicant's professionals were required to travel in connection with providing services to the Debtor. This travel was primarily for the purpose of attending critical meetings with the Debtor's representatives, experts, committees, and co-counsel.

For its services related to the above services, Applicant spent 30.00 hours, incurring fees in the sum of \$10,729.00⁶ during the Second Interim Period.

III. FUTURE SERVICES

Applicant anticipates continuing to assist the Debtor in its dealings with the DWR, CPUC and other administrative and regulatory bodies. Applicant will continue to represent the Debtor in litigation and administrative matters concerning the BFM Contracts, the DWR litigation, the 851 matters and other litigation and/or administrative matters that are necessary and appropriate.

IV. ESTABLISHMENT OF FEES

"A compensation award based on a reasonable hourly rate multiplied by the number of hours actually and reasonably expended is presumptively a reasonable fee." *In Re Manoa Finance Company*, 853 F.2d 687 (9th Cir. 1988). Establishing a reasonable hourly rate requires consideration of market rates in the relevant community which are, in turn, at least partly a function of the type of services rendered and the lawyer's experience, skill and reputation.

1. The members, associates, and paraprofessionals of Applicant who have rendered professional services in this case are as follows: Stephen C. Neal, Samuel M. Livermore, J. Michael Kelly, Deborah A. Marshall, Martin S. Schenker, John C. Dwyer, Jamie E. Chung, Linda

⁶ The total amount of fees is \$934,133.75. However, in compliance with the U.S. Trustee's Guidelines regarding Travel, Applicant has deducted \$5,364.50 (one-half of the Travel fee amount) from the total amount of fees and is requesting fees of \$928,769.25.

F. Callison, Neal J. Stephens, James C. Maroulis, Lori E. Ploeger, Gregg S. Kleiner, Jeffrey S. Karr, Patrick C. Pope, Cory E. Manning, Clay C. Wheeler, Maureen P. Alger, Wendy J. Brenner, Karen S. Daly, Michele E. Moreland, Steven G. Sklaver, Susan L. Ruebush, Greg K. Klingsporn, Alma L. (Liza) Prado, Peter T. Smith, Eric J. Steiner, Craig C. Daniel, John P. Kinsey, Angela L. Mikels, B. Douglas Robbins, Susan E. Gonzalez, Joyce E. Stackpole, Daniel R. Kaleba, Kate J. Rorrer, David D. Tull, Kris T. Cachia, Margaret Baer, Cornelius R. Bonner, Marjorie P. Wilbur, Danielle A. Fluker, Kelly M. Tanisawa, Teresa M. Dippery, Sherlyn M. Takacs, Claire M. Cochran, Gloria Torres, and Michael D. France.

2. Pursuant to Section (b)(3) of the United States Trustee's *Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330*, a summary sheet of attorneys and paraprofessionals who have worked on this case, their status, billing rate per hour, the total hours each devoted to the case and the total fees requested for each professional, and summaries of the attorneys and paraprofessionals' qualifications are attached hereto as Exhibit B to the Schenker Declaration.

V. CONCLUSION AND PRAYER

1. In performing the services described above during the Second Interim Period, Applicant spent 3149.00 hours. Applicant believes that the sum of \$928,769.25⁷ is reasonable compensation for its services, calculated on the basis of the hours and hourly rates listed in the attached summary and the time summaries attached to the Declaration.

2. In performing its services during the same time period, Applicant incurred actual and necessary expenses of \$52,714.20⁸. An itemized summary of these expenses is set forth on Exhibit C to the Time Records Exhibit.

3. Kris Tsao Cachia is a paralegal who assisted Applicant in the preparation of this fee Application. Ms. Cachia bills at the rate of \$130 per hour. Applicant submits that these efforts are

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properly compensable under In Re Nucorp Energy, Inc., 764 F.2d. 655 (9th Cir. 1985).

Approximate fees incurred in preparing this fee application are as follows: Gregg S. Kleiner - \$2,130.00; and Kris Tsao Cachia - \$2,340.00.

4. Applicant's Second Fee Application, the Schenker Declaration, and Time Records Exhibit were filed with the Court and served on or about January 14, 2002. Concurrently, Applicant served the Second Fee Application on the parties listed on the Special Notice List. Pursuant to paragraph 8 of the Interim Fee Order, the time records can be accessed by the public at BMDS, 246 First Street, Suite 202, San Francisco, California 94105. In the event a party desires a copy of the time records, that party should contact BMDS at the above address or telephonically at (415) 371-0232 or by facsimile at (415) 371-1973.

WHEREFORE, Cooley Godward LLP, prays for interim compensation in the sum of \$928,769.25⁹ and expense reimbursement in the sum of \$52,714.20¹⁰ for the Second Interim Period.

Dated: January 14, 2002

COOLEY GODWARD LLP

By: 

J. Michael Kelly

Special Counsel for Debtor
PACIFIC GAS and ELECTRIC COMPANY

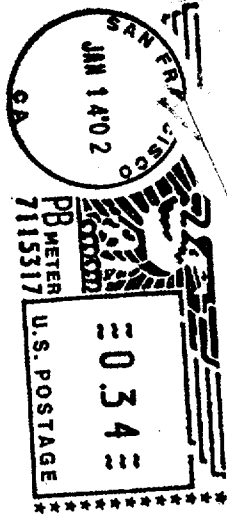
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