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8 **UNITED STATES BANKRUPTCY COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10
11 In re)
12 PACIFIC GAS AND ELECTRIC) No. 01-30923 DM
13 COMPANY,) Chapter 11
14 Debtor.) Date: October 22, 2001
15) Time: 1:30 p.m.
16) Ctrm: Hon. Dennis Montali
235 Pine Street, 22nd Floor
San Francisco, California

17
18 **UNITED STATES TRUSTEE'S OBJECTION TO**
19 **PROFESSIONAL FEE APPLICATIONS OF**

20 **DEBTOR'S PROFESSIONALS:**

21 **HOWARD, RICE, NEMEROVSKI, CANADY, FALK & RABKIN**
22 **HELLER, EHRMAN, WHITE & McAULIFFE, LLP**
23 **KEKER & VAN NEST LLP**
24 **ERNST & YOUNG CORPORATE FINANCE LLC**
25 **SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP**

26 **AND**

27 **OFFICIAL UNSECURED CREDITORS' COMMITTEE'S PROFESSIONALS:**

28 **MILBANK, TWEED, HADLEY & McCLOY**
PRICEWATERHOUSECOOPERS LLP

1 **Introduction**

2 Linda Ekstrom Stanley, United States Trustee, submits this objection to the
3 applications for compensation^{1/} filed by professionals employed by debtor, Pacific Gas and
4 Electric Company (“PG&E”) and by the Official Committee of Unsecured Creditors (the
5 “OCC”).

6 The United States Trustee objects to the applications filed by debtors professionals
7 including Howard, Rice, Nemerovski, Canady, Falk & Rabkin (“Howard Rice”), Heller,
8 Ehrman, White & McAuliffe, LLP (“HEWM”), Kecker and Van Nest (“KVN”), Ernst & Young
9 Corporate Finance LLC (“Ernst & Young”) and Skadden Arps, Slate, Meagher & Flom, LLP
10 (“Skadden Arps”). Specific objections to these applications are set forth below. In general,
11 the United States Trustee objects to duplication of effort by several firms and charging time
12 better characterized as overhead to the bankruptcy estate.

13 The United States Trustee also objects to the applications filed by Milbank, Tweed,
14 Hadley & McCloy (“Milbank”) and PricewaterhouseCoopers, LLP (“PWC”), respectively
15 counsel and accountants to the Official Committee of Unsecured Creditors (the “OCC”).
16 Neither Milbank nor PWC has met the burden of proving their fees, which total \$2.2 million
17 for Milbank and \$1.8 million for PWC, have benefitted the estate to the full extent of the fees
18 sought. The specific applications are set forth below.

19 **Argument**

20 The United States Trustee is responsible for, among other things, supervising "the
21 administration of cases ... under chapter 7" of the Bankruptcy Code, and "monitoring
22 applications for compensation and reimbursement filed under section 330 of title 11." 28
23 U.S.C. § 586(a)(3)(A). Counsel has the burden of proving entitlement to compensation
24 under 11 U.S.C. § 330(a)(3)(A). In re *Xebec*, 147 B.R. 518, 524 (Bankr. 9th Cir. 1992).
25 denied. The Bankruptcy Code permits the Bankruptcy Court to award “reasonable
26 compensation for actual, necessary services” to professionals employed under sections 11
27

28 ^{1/} All applications will be referred to by the shortened version of the firm’s name followed by “Application”
(e.g., the “Howard Rice Application”).

1 U.S.C. §§ 327 and 1103. To merit compensation, an applicant for fees must prove an
2 “identifiable, tangible, and material benefit to the estate.” *Andrews & Kurth LLP v. Family*
3 *Snacks, Inc. (In re Pro-Snax Distributors, Inc.)*, 157 F.3d 414, 426 (5th Cir. 1998). An
4 applicant must affirmatively show requested fees are compensable as well as actual and
5 necessary. *Unsecured Creditors’ Committee v. Puget Sound Plywood, Inc.*, (*In re Puget*
6 *Sound Plywood, Inc.*), 924 F.2d 955, 958 (9th Cir. 1990).

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1 **DEBTOR'S PROFESSIONALS**

2 **Howard, Rice, Nemerovski, Canady, Falk & and Rabkin**

3 **1. Howard Rice and HEWM's Legal Work Overlaps Substantially**

4 **a. TURN Accounting Action**

5 The fee applications and narratives submitted by Howard Rice, PG&E's general
6 bankruptcy counsel, and HEWM, one of its special counsel, show duplication of effort in
7 certain categories. Both firms spent considerable time on the so-called TURN accounting
8 proceeding. Howard Rice recorded charges of \$368,583 and HEWM recorded \$237,136 in
9 these matters (Howard Rice Application 33:16-18; HEWM Application 14:6-12).

10 The Howard Rice Application sets forth in greater detail the work performed, including
11 the research and filing of an adversary proceeding seeking to enjoin enforcement of the
12 CPUC's March 27, 2001 order. The United States Trustee does not object to this category
13 based on the results achieved. The firms have not shown, however, why it was necessary
14 for two firms to be doing very similar work or whether they coordinated their efforts for the
15 estate. The United States Trustee suggests HEWM in particular supplement its application
16 to explain whether and how the work was coordinated, and if it was not, why it was
17 necessary for the estate to have two firms working on these matters.

18 **b. HEWM's "Ancillary Services"**

19 Both HEWM and Howard Rice performed analysis of the Bankruptcy Court's
20 jurisdiction, general regulatory issues and the interplay between regulatory and bankruptcy
21 jurisdiction. Howard Rice's time on these matters is spread throughout its application, and
22 can be found in categories like Turn Adversary Proceeding, Case Administration and
23 Litigation - California ISO. HEWM's work appears distilled into one category called
24 "Ancillary Services." While it is difficult to isolate Howard Rice's time entries because they
25 are pervasive, HEWM's time amounts to 273 hours and fees of \$91,125. HEWM Application,
26 "Ancillary Services".

27 In footnote 4 of the application, HEWM alleges they are entitled to perform
28 "bankruptcy-related advice" presumably relying on this part of the employment order to

1 justify their time attributed to Ancillary Services. HEWM’s description of “[r]esearch, analysis
2 and advice to PG&E regarding various bankruptcy law issues or matters arising out of or
3 related to litigation, regulatory or transactional matters for which [HEWM] was retained as
4 special counsel” (HEWM Application 19:5-7) indeed would suggest the firm restricted itself
5 to matters for which it remains responsible.

6 The time records suggest otherwise, though. On May 4, 2001, HEWM recorded time
7 for “motion to dismiss in bankruptcy proceeding.” On May 16, 2001, HEWM recorded time
8 for “briefing on ratepayer committee issues.” On June 9, 2001, HEWM recorded time for
9 “legal research and analysis pre-emption and sovereign immunity issues . . .” Thus, no
10 meaningful difference can be made between the entries HEWM recorded in this category
11 and many similar entries recorded by Howard Rice as general counsel.

12 The United States Trustee urges that absent explanation, HEWM’s time in this
13 category be reduced by 50% to reflect duplication of services rendered by Howard Rice.

14 **Heller, Ehrman, White & McAuliffe**

15 Objections to overlapping work between HEWM and Howard Rice are set forth above
16 and incorporated. The United States Trustee raises the following issues remaining issues
17 regarding HEWM:

18 **1. HEWM Paralegal and Staff Time Reflects Administrative Time Properly**
19 **Charged to Overhead**

20 HEWM seeks approximately \$206,808 in paralegal, law student and staff time. The
21 United States Trustee objects to any time spent on administrative tasks by these
22 employees. Overhead is not compensable under the *Guidelines for Compensation and*
23 *Expense Reimbursement of Professionals and Trustees* (the “Guidelines”),^{2/} a conclusion
24 supported by case law. *In re STN Enter., Inc.*, 70 B.R. 823, 838 (Bankr. D. Vt. 1987); see
25 also *Unsecured Creditors’ Committee v. Puget Sound Plywood, Inc.*, (*In re Puget Sound*
26 *Plywood, Inc.*), 924 F.2d 955, 958 (9th Cir. 1990) (administrative and nonlegal services are
27 not “compensable” and cannot be paid by a bankruptcy estate).

28 _____
^{2/} Guidelines, #18.

1 A review of the time entries recorded by HEWM’s paralegals and staff shows the firm
2 charged approximately \$82,522 for time which can be characterized as indexing files,
3 reviewing and updating files and organization of files. *Declaration of Patricia Martin in*
4 *Support of United States Trustee’s Objections to Professional Fee Applications* (the “Martin
5 Decl.”), Martin Decl. ¶ 5, Exh. B. The United States Trustee urges 75% of this time
6 (approximately \$60,000) be disallowed as overhead.

7 **2. HEWM’s Seller/Generator Category Appears to Duplicate KVN’s Work on**
8 **Generator Overcharging**

9 HEWM charged \$43,385.50 in fees attributable to “Seller/Generator Issues.” The firm
10 describes this time as “concerning the role of third parties in the California Electricity market
11 crisis, including potential claims for recovery of money or other relief that might be brought
12 against such third parties.” (HEWM Application 12:20-22). HEWM’s description appears to
13 duplicate time spent by KVN on overcharging in the electricity market. KVN describes its
14 time as “analyzing potential litigation between PG&E and other parties concerning excessive
15 charges for electric power in the California electric-power market.” (KVN Application 4:24-
16 26). KVN seeks \$230,258.56 for this work.

17 The descriptions suggest overlapping or duplication of effort. The United States
18 Trustee recognizes debtor and its counsel are sensitive about disclosing more details about
19 the nature of the services rendered. Given the total fees approach \$300,000, however, the
20 firms should at least distinguish their separate or joint roles so parties can meaningfully
21 evaluate the value of the work and the potential for duplication.

22 **Keker & Van Nest**

23 Objections to overlapping work between HEWM and KVN are set forth above in the
24 objections to HEWM and are incorporated herein.

25 **Ernst & Young Corporate Finance LLC**

26 **_____ Conflict Checks Should Not be Paid by the Estate**

27 Ernst & Young billed the bankruptcy estate for \$29,705 in time spent checking
28 conflicts and updating its “connections”. Martin Decl. ¶ 6, Exh. C. Time spent checking

1 conflicts is overhead and the United States Trustee urges it be disallowed.

2 Skadden, Arps, Slate, Meagher & Flom LLP

3 Travel Time and Expenses Should Not Be Billed to The Estate

4 Skadden seeks \$7,287 for travel time at normal billing rates. Martin Decl. ¶ 7, Exh.
5 D. The Guidelines do not authorize professional firms to bill bankruptcy estates for non-
6 working travel time.³⁷ Travel time should be disallowed. Further, Skadden recorded \$9255
7 in air fare costs in April 2001. The time entries for travel charged may include a trip from
8 San Francisco to London. The firm should explain whether the cost travel from San
9 Francisco to London was billed to the estate and if so, how that travel benefitted the
10 bankruptcy estate.

11 \\\n12 \\\n13 \\\n14 \\\n15 \\\n16 \\\n17 \\\n18 \\\n19 \\\n20 \\\n21 \\\n22 \\\n23 \\\n24 \\\n25 \\\n26 \\\n27 _____

28 ³⁷ The Guidelines provide: "Airplane Travel Time--Airplane travel time is not compensable, but work actually done during a flight is compensable. If significant airplane travel time is expected in a case, specific guidelines should be obtained for that case." (Emphasis added).

1 **OFFICIAL UNSECURED CREDITORS' COMMITTEE PROFESSIONALS**

2 **Milbank, Tweed, Hadley & McCloy**

3 **1. Milbank Has Not Justified Approximately \$659,810 In Fees Attributable to**
4 **the CPUC, the FERC and Other Regulatory and Legislative Matters**

5 a. The Milbank Application Does Not Break Out the Considerable Time
6 Spent on Regulatory Matters Into Appropriate, Understandable
7 Categories

8 At any particular time, Milbank dedicated at least ten lawyers^{4/} and numerous summer
9 associates to regulatory-related matters for the OCC. Although the actual time entries for
10 regulatory-related work can be found throughout the Milbank Application, most of the time
11 resides in three categories, “business operations” “other litigation” and “business analysis.”^{5/}
12 In total, the United States Trustee has identified approximately 1,813 hours and \$659,810 in
13 fees broadly attributable to regulatory matters, including proceedings before the CPUC, the
14 FERC and other agencies, and tracking legislative developments in Sacramento and the
15 U.S. Congress. Martin Decl. ¶ 8 and Exh. I.

16 Milbank has not proven the vast amount of time the firm spent on regulatory matters
17 conferred a benefit commensurate with the expense to the estate. Milbank broke its time
18 related to regulatory matters into the three categories described above, but the categories
19 and descriptions do not lend themselves to easy analysis. The firm made no attempt to
20 isolate the time and fees by the actual issues discussed in the narrative, so it is not possible
21 to determine how much time the firm has spent on any of the issues discussed in the
22 narrative application.

23 Even if the time had been broken out into meaningful categories, rather than three
24 large, difficult to analyze categories, the Milbank Application fails to describe with any
25 particularity the precise benefit any of the work on regulatory matters conferred on the
26 estate. By way of example, the firm refers to work done on the Edison MOU and the

26 ^{4/} The lawyers are: Feo, Marks, Diamond, Urquhart, McSpadden, Kramer, Schwarz, Kaplan, Mathurin and
27 Pascal.

28 ^{5/} Some regulatory-related work with similar sounding names and descriptions does appear in other
categories in the application. Analysis of the Filed Rate Case, for example, appears in a minimum of three
categories: *Business Operation*, *Other Litigation* and *Business Analysis*.

1 SDG&E MOU. The narrative does not explain why this was necessary or appropriate given
2 the facts of the case. Most if not all of the narrative descriptions suffer the same defect.
3 The firm assumes parties in interest know the relevance and importance of the work, and in
4 doing so, fails to sustain its burden of proof. For nearly three quarters of a million dollars in
5 fees, the application ought to set out in detail what was accomplished.

6 b. Milbank's Time Entries Do Not Support the Full Request for Fees in
7 Connection with Regulatory Matters

8 In analyzing the time spent by Milbank on regulatory matters and in an attempt to
9 harmonize the time with the narrative application, the United States Trustee has reviewed
10 carefully the time entries supporting the narrative. The United States Trustee did this by
11 reviewing each time entry in the three major categories comprising Milbank's regulatory
12 work. We attach the results of that analysis to Ms. Martin's declaration. Martin Decl. as
13 Exhibit I. See Martin Decl. ¶ 8. Several conclusions can be drawn from the United States
14 Trustee's analysis.

15 The time entries supporting the regulatory work categories consist largely of generic,
16 hard to categorize descriptions. Because they are unspecific, the entries suggest the work
17 performed was non-substantive in nature. Many of the actual entries describe "tracking"
18 legislative matters,⁶ "review and analysis",⁷ and "monitoring" CPUC and FERC dockets.

19 Further, summer associates did a considerable portion of the work in the category
20 "business operations". The United States Trustee estimates a minimum of \$51,408 of
21 \$333,373 is attributable to summer associates. Martin Decl. ¶ 8. Understanding how law
22 students could make a contribution to the case commensurate with the amount they have
23 billed is difficult.

24 The firm dedicated many high hourly billing professionals to regulatory issues. In the
25 application, the firm says partner Ed Feo, who bills at \$595 per hour, is responsible for

26 ⁶ See Allan Marks and Francisco Ochoa 7/16/01 - 7/20/01, Jeff Kahane 5/23 to 6/21/01, Aaron Reneger
27 7/1/01 to 7/31/01.

28 ⁷ The application refers to "review and analysis" of SDG&E MOU (13:6-7); CPA (13:15-16); and
"monitoring, review and analysis" of other matters (30:26-31:7); other similar entries can be found throughout this
category.

1 regulatory matters. Careful review of the time entries shows there were at least eight
2 lawyers with billing rates exceeding \$375 per hour billing time to regulatory matters.^{g/}
3 Several of these lawyers billed more than 150 hours to regulatory matters. Martin
4 Declaration ¶ 8. The firm has not justified why so many high hourly rate professionals were
5 used to staff this portion of the assignment, particularly in view of Mr. Feo's experience and
6 high hourly rate.

7 Finally, Milbank's work on regulatory matters may have been duplicated in part by
8 both PWC and Saybrook, the OCC's investment bankers. The Saybrook firm's fee
9 application indicates a large portion of the \$894,470 in fees and expenses it incurred are
10 related to tracking legislative matters in Sacramento. To the extent Milbank is charging for
11 the same work, such as tracking legislation, it may be duplicative. At the very least, the
12 effort does not appear to have been streamlined.

13 **2. Milbank Should Not Be Compensated for Work on the Unsuccessful**
14 **Commodities Trading Motion**

15 Individual members of the Official Committee of Unsecured Creditors (the "OCC")
16 sought to insulate themselves from liability for continuing to trade in debtor's securities and
17 to allow them to continue trading in "commodities" such as gas, electrical energy, futures
18 and derivatives. The first of these requests, consistent with the policies of the Securities
19 and Exchange Commission, was approved by the court. The United States Trustee, among
20 others, contested approval of the second request which would have approved in advance a
21 procedure to allow select members of the OCC to trade in commodities also traded by
22 debtor in the ordinary course of business. The court declined to enter the order insulating
23 the "commodity trading" members from liability per se.

24 The United States Trustee has identified approximately \$57,500 in fees attributable to
25 the "commodities trading motion." Martin Decl. ¶ 9, Exh. J. These fees should be
26 disallowed. The commodities trading motion was not warranted because no party, including

27 ^{g/} The lawyers include Mr. Kramer (\$470/hr.), Ms. Urquhart (\$385/hr.), Mr. Feo (\$595/hr.), Mr. Neufeld
28 (\$435/hr.), Mr. Sorochinsky (\$420/hr.), Mr. McSpadden (\$415/hr.), Mr. Johnson (\$420/hr.) and Mr. Marks
(\$450/hr.)

1 the United States Trustee, had ever contested the right of individual members to trade in
2 commodities. Moreover, the motion was unsupported by law. Not a single published case
3 on point could be found to support the request or to show any court had ever approved in
4 advance a creditors' committee member's trading of commodities. Finally, the motion was
5 not intended to benefit the committee as a whole, but particular members of the committee.
6 Insofar as select members of the committee wished the protection of the commodities
7 trading order, they ought to have engaged independent counsel to prosecute the request,
8 rather than billing the estate for the attempt.

9 **3. The Unsuccessful Attempt to Employ the Public Relations Firm Rogers &
10 Associates Did Not Benefit the Estate**

11 _____ The committee sought court authority to employ a public relations firm, Rogers &
12 Associates. The papers filed in support of the application were strikingly brief, did not
13 demonstrate any necessity for the employment, and revealed the proposed public relations
14 firm had mis-communicated several important facts. The Bankruptcy Court sustained the
15 United States Trustee's objection to the application, holding the proposed employment was
16 unnecessary. The United States Trustee estimates Milbank spent approximately 33.9 hours
17 and incurred fees of \$13,000 on Rogers & Associates-related issues and recommends that
18 amount be disallowed. See Martin Declaration ¶ 10, Exhibit K.

19 **4. Milbank's Overhead and Administrative Time Is Not Compensable**

20 Milbank seeks compensation for several matters which appear to be overhead and
21 therefore not compensable under the *Guidelines*:

22 a. Calendaring and File Control Issues

23 Milbank's category "PG&E Case Administration" contains numerous entries that
24 appear related to calendaring and file maintenance. The United States Trustee has isolated
25 approximately 64.5 hours and \$27,090 in fees broadly described as "review and analyze
26 incoming pleadings" "attention to incoming pleadings" and "attention to case administration."
27 See Martin Decl. ¶ 11, Exhibit L. These entries do not appear to have particular legal
28 importance. They are better characterized as overhead because they appear to deal with

1 the physical management of pleadings, intake and distribution. Absent clarification and
2 justification for the time, the United States Trustee objects to any payment for this work.

3 b. Case Clerk

4 The application seeks \$31,480 in fees for an unnamed case clerk. This figure is
5 derived from 314.8 hours at \$100 per hour. Declaration of Robert Jay Moore in support the
6 Milbank Application (the "Moore Decl."), Exh. 1, page 2. Most of the time consists of
7 organizing, indexing and scanning documents. If performed by a legal secretary, the costs
8 would not be compensable under the Guidelines.

9 The United States Trustee believes these costs should be characterized as overhead
10 and not paid by the estate. All pleadings in the case are available at PG&E's electronic web
11 site, so little additional advantage can be found in scanning and transmitting documents to
12 duplicate work the estate is already paying to accomplish.^{9/} To the extent the time is spent
13 on file maintenance, it is overhead and not reimbursable.

14 c. Non-Working Travel Time

15 Although the firm does not appear to have a consistent approach to travel charges,^{10/}
16 Milbank seeks \$37,256 for 92 hours of travel time at normal billing rates. Moore Decl., Exh.
17 2, Category 24. There appear to be two primary sources of travel billings: Mr. Marks
18 incurred 25.6 hours of travel time, approximately 27% of the total. Summer associates
19 incurred a total of 17.9 hours in travel time, or 20% of the total. Travel time should not be
20 allowed. Even if the court permitted travel time there must be a showing the time spent
21 somehow benefitted the estate.

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26 ^{9/} As discussed *infra*, PWC set up an "extranet" web site to disseminate materials to committee members;
27 it is difficult to understand why Milbank and PWC would be transmitting material to the OCC using different
28 media.

^{10/} Neither Mr. Moore nor Mr. Aronzon, the committee's primary bankruptcy lawyers, incurred any
substantive travel time.

1 d. Printer

2 Milbank seeks \$3275.03 for a Hewlett Packard HP9100C printer. Capital
3 expenditures by law firms are overhead and should not be paid by the bankruptcy estate.
4 The United States Trustee objects to this charge. Martin Decl. ¶ 12, Exh. M.

5 **PricewaterhouseCoopers LLP**

6 **1. PWC Fails to Justify the Use of Multiple Professionals For Meetings,**
7 **Projects and Court Hearings**

8 PWC's application seeks payment of \$1,799,553 in fees for more than 4,544 hours of
9 work. The United States Trustee has concluded PWC spent a minimum of 685 of those
10 hours and \$361,233 in professional fees, in inter-office conferencing and use of multiple
11 professionals to staff hearings, the § 341(a) meeting of creditors and OCC meetings and
12 conference calls. That figure is fully 15% of PWC's time in the case. The *Guidelines*
13 prohibit the use of multiple professionals and extensive use of interoffice conference unless
14 justified.^{11/}

15 The United States Trustee's review demonstrates PWC includes as many as seven
16 and frequently four to six professionals in meetings, committee calls and conferences. The
17 United States Trustee's calculations are set for in the *Declaration of Patricia Martin*. In April,
18 May and June, PWC sent as many as six professionals to creditor committee meetings. In
19 total, there are at least 28 different meetings or conferences reflected in bills which four or
20 more PWC professionals attended. There are also several occasions on which PWC sent
21 several professionals to court hearings. On May 8, 2001 and June 5, 2001, PWC sent three
22 professionals to court hearings. This far exceeds the number of lawyers Milbank sent to the
23 same hearing. PWC's application does not explain the necessity of so many professionals
24 attending OCC meetings and conferences as well as Bankruptcy Court hearings. See

25 _____
26 ^{11/} *Guideline #15: Conferences--Professionals should be prepared to explain time spent in conferences with*
27 *other professionals* or paraprofessionals in the same firm. Failure to justify this time may result in disallowance of
all fees related to such conferences.

28 *Guideline #16: Multiple Professionals--Professionals should be prepared to explain the need for more*
than one professional or para-professional from the same firm at the same court hearing, deposition or meeting.
Failure to justify this time may result in compensation for only the person with the lowest billing rate.

1 Martin Decl. ¶ 13, Exhibit N.

2 The United States Trustee recommends an adjustment be made to account for
3 multiple, unexplained professionals used by PWC. The United States Trustee urges the
4 court disallow fees incurred by any more than two professionals attending OCC meetings
5 and conference calls and one professional attending Bankruptcy Court hearings. Interoffice
6 conferencing should be disallowed. Using this methodology, the United States Trustee
7 suggests a reduction of \$167,941, 46.5% of the total.

8 The United States Trustee believes this adjustment, which still permits PWC to use
9 more than one professional in committee meetings and conferences, takes account of the
10 complexity of the case, the importance of the issues and the time pressures professionals
11 have faced in this unique engagement.

12 **2. PWC Has Not Adequately Explained the Necessity \$210,495 in Work on**
13 **Financial Grid Load Modeling**

14 PWC attributes 622.8 hours and \$210,495 in fees to a category called “financial grid
15 load modeling.” PWC’s application says this work was directed to “simulat[ing] the load grid
16 balances of electrical power across the state” (PWC Application, 20:25-28). The United
17 States Trustee is concerned this effort was not necessary to the committee’s function in the
18 case and may have duplicated unnecessarily analyses PG&E performs.

19 From the description and time entries supporting this category, it appears PWC was
20 engaged in developing a financial model for the “net short” electrical power position for the
21 entire state of California. The time entries reveal PWC spent time on weather patterns,
22 gauges of economic activity and future consumer prices. The firm investigated the relative
23 needs of San Diego Gas & Electric, Southern California Edison and PG&E. This extensive
24 effort commenced almost immediately upon PWC’s engagement by the creditors committee.
25 The bulk of the time entries, approximately 537 hours, were recorded in May and June,
26 2001.

27 The application does not demonstrate PWC’s grid analysis was necessary or
28 warranted on the facts of the PG&E bankruptcy case. The ISO manages the electrical grid

1 and presumably keeps pretty accurate track of its energy requirements. PG&E, which must
2 be keenly interested in the “net short” position because it may one day be exposed to that
3 market again, presumably monitors and models this area as well. The committee and PWC
4 do not make a compelling case the modeling PWC did was important to the committee and
5 its decision-making process. They do not explain why this material could not have been
6 obtained from the debtor or whether the committee made any attempt to obtain it before re-
7 creating it.

8 The United States Trustee appreciates PWC spent significant time on modeling and
9 understanding the financial aspects of other parts of the energy market, such as its analysis
10 of DWR’s revenue requirements (\$88,675) and aspects of the proposed California \$12.5
11 billion bond issuance (\$41,178). The application makes the necessity of these tasks clear.
12 The description and time entries supporting grid modeling do not support the same
13 conclusion.

14 **3. PWC Has Not Proven the Necessity of Building an Extranet Web Site for**
15 **Committee Members**

16 PWC developed a web site for the exclusive use of the eleven member creditors’
17 committee “to allow for the easier transfer of information related to the case.” PWC has not
18 proven the 222 hours of time or the \$64,278 in fees attributable to this task were necessary
19 to the case. The committee consists of only eleven members, all of whom have e-mail
20 addresses. PWC makes no showing it would not have been considerably cheaper to use e-
21 mail distribution and selected mailings and overnight service to accomplish the same goal.
22 Moreover, pleadings in the PG&E bankruptcy case and CPUC decisions and rulings are
23 available through the court’s web site and on the internet. Moreover, the committee’s law
24 firm Milbank billed considerable time to the file for “preparation of updates to Committee
25 members regarding the Case and developments before the FERC, the CPUC and California
26 Legislature.” (Milbank Application 16:1-2). Under the circumstances, PWC has not
27 demonstrated this time was necessary or appropriate.
28

1 **4. PWC’s Overhead and Administrative Time Is Not Compensable**

2 a. Travel Time is Not Compensable

3 PWC billed \$52,315 in travel time to the estate (after writing off \$21,000 on their own
4 initiative) at full hourly rates. Travel time, as noted in connection with the Milbank
5 Application, is not compensable. The United States Trustee urges the court disallow the
6 remaining travel time.

7 b. Conflict Checks and Ethical Walls Are Not Compensable

8 PWC billed the bankruptcy estate for time spent checking conflicts, understanding the
9 work being done by PWC on the P/X case, building an ethical wall (including drafting
10 confidentiality agreements for internal use by its professionals) , and a presentation on
11 billing bankruptcy estates for time. The majority of the 125 hours in this category and the
12 \$55,587 in fees for this category is overhead and the United States Trustee urges it be
13 disallowed.

14 c. Creation of Time and Expense Billing System

15 _____PWC’s Application seeks approximately \$63,850 in fees attributable to fee
16 applications and billings. Two professionals spent a total of 218 hours building a time
17 reporting system and inputting time into that system. Martin Decl. ¶ 14. This time amounts
18 to at least \$43,720 in fees.

19 PWC may argue it is entitled to recover the cost of preparing fee applications and
20 assert this time is payable by the estate. The entries themselves show the time was not
21 spent preparing the fee application, but in simple record keeping to support the fee
22 application. In this sense, it is more like time spent inputting a professionals time notes than
23 in preparing an application and should be regarded as overhead.

1 **Conclusion**

2 The United States Trustee requests the Bankruptcy Court sustain the objections set
3 forth above.

4 Date: October 15, 2001

LINDA EKSTROM STANLEY
UNITED STATES TRUSTEE

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6 Patricia Cutler
Assistant United States Trustee

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8 By: _____
9 Stephen L. Johnson,
10 Attorneys for United States Trustee