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11 William T. Neary

12 **UNITED STATES BANKRUPTCY COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

| | | | |
|-----------------------------|---|---------|---|
| 14 In re |) | No. | 01-30923 DM |
| 15 PACIFIC GAS AND ELECTRIC |) | Chapter | 11 |
| 16 COMPANY, |) | Date: | February 26, 2004 |
| 17 Debtor. |) | Time: | 1:30 p.m. |
| |) | Ctrm: | 235 Pine Street, 22 nd Floor |
| |) | | San Francisco, California |

18 **OBJECTION OF U. S. TRUSTEE TO CERTAIN FEES REQUESTED BY MILBANK**
19 **TWEED AND CERTAIN FEES AND COSTS REQUESTED BY HELLER EHRMAN**

20 Pursuant to the Court's Order Establishing Interim Fee Application and Expense
21 Reimbursement Procedure, entered July 26, 2001, the Office of the U.S. Trustee has
22 received electronic transmission of various professionals' monthly invoices and formal fee
23 applications. These electronic transmissions have been uploaded into a database, data
24 from which can then be downloaded into an Excel spreadsheet which allows an in-depth
25 analysis of each fee application using a variety of methods.

26 Using the method described above, Bankruptcy Analyst Patricia Martin has reviewed
27 the professionals' fee applications which are the subject of this hearing. See Declaration of
28 Patricia Martin and the Report of Professional Fees and Expenses for Current
Period (12/01/02 - 3/31/03) and Cumulative Case to Date (4/06/01 - 3/31/03) which is
attached to the declaration as Exhibit 1 and filed herewith. It is the intent of the report to
U. S. TRUSTEE'S OBJECTION TO PROFESSIONAL FEES AND COSTS

1 give the court, the debtor, the creditors' committee, and interested parties (a) a broad
2 overview of the cost of the bankruptcy case; (b) an approximation of the cost of specific
3 matters so the court and knowledgeable parties can assess the reasonableness of fees; and
4 (c) sufficient detail with respect to attorneys, accountants, billing rates, billing trends to
5 isolate areas in which better billing discretion might be utilized.

6 INTRODUCTION

7 As a general matter, the firms employed in this case have responded to our initial
8 objections and the court's guidance by exercising billing judgment and reigning in fees in the
9 areas of concern. The objection below reflect our considered view that certain fees and
10 costs should be reduced or more fully justified.

11 MILBANK TWEED

12 We submit that in this fee application Milbank has billed unnecessarily for non-plan
13 related regulatory monitoring. At their narrative pages 16, 17, 18 and 20, they show
14 monitoring of FERC, DWR, Legislative and non-plan CPUC monitoring totaling \$189,000
15 that would seem unnecessary given that a plan was negotiated and two firms for debtor
16 were involved in this activity. The totals are broken down as follows: FERC - \$ 4,804, p. 16;
17 DWR - \$ 23,088, p. 20; Legislative - \$ 22,521, p.18; and the UST estimates non-plan related
18 CPUC monitoring at \$ 138,752 (total CPUC monitoring is \$ 365,776 which includes plan
19 related monitoring; the \$ 138,752 is an estimate of the portion of this figure that is not plan
20 related).

21 HELLER EHRMAN

22 The firm billed 216.5 hours or \$66,768 on the "filed rate case" even though all
23 litigation was stayed by the court during the settlement discussions and, based on the global
24 compromise, the litigation will be dismissed. See pages 10 through 13 of the narrative for
25 Heller's description of this matter. See specifically ¶30, page 12 and ¶33, page 13 for
26 Heller's general explanation of the services performed for \$66,768 to make a determination
27 whether all services were necessary in "winding down" the litigation. Without fuller
28 justification, these billings would seem to be excessive.

1 Based on the most recent application, it appears Heller has changed its description of
2 how Lexis/Nexis research is billed. It now appears that they are using estimates that include
3 overhead. Earlier fee applications indicated that Heller received volume discounts from
4 Westlaw and LEXIS - not allocable to any particular matter or client. Heller stated in earlier
5 applications: "computerized legal research is billed at the standard Westlaw and Lexis rates
6 without markup or discount." A new disclosure in this application states "[w]e have been
7 advised that since PG&E filed for bankruptcy on April 6, 2001, Heller Ehrman's billing
8 arrangements with Westlaw and LEXIS have not, in fact, included volume discounts." The
9 firm has fixed fee service agreements and pays (a) flat monthly fees for defined databases
10 and (b) additional per usage fees to databases that are not covered by the flat monthly fee.

11 Adam Cole states at his Certification pleading , p. 7, that "Heller Ehrman charges its
12 clients, including PG&E, at standard law firm rates published by Westlaw and LEXIS. How
13 the amount Heller Ehrman charges its clients for Westlaw and LEXIS services during any
14 given month compares to Heller Ehrman's costs of providing such services depends on
15 numerous factors, including the total number of hours of legal research services utilized;
16 which Westlaw and LEXIS databases are accessed, and to what extent; **and the extent of**
17 **additional indirect expenses for equipment, data transmission lines, printing,**
18 **technical support, etc. which Heller Ehrman incurs to provide computerized research**
19 **services to its clients.** Because of those factors, we currently are unable to determine the
20 precise amount of per transaction expense associated with Heller Ehrman's legal research
21 services for any given month."

22 This Court's Compensation Guidelines indicate that computerized research charges
23 should be at actual cost. Heller states it cannot calculate its actual cost. Moreover, Mr.
24 Cole's declaration implies overhead is added in to the firm's charges for research. It is
25 clearly Heller's burden to prove its actual costs or forgo payment.

26 However, if the court believes some fees should be allowed, we submit the
27 alternative of comparing Heller's research charges to Howard Rice's research charges to
28 provide some perspective as to whether Heller has over-billed. Heller has charged

1 approximately \$ 495,941 in research charges since commencement of the case. For
 2 comparison purposes, Howard Rice, debtor's counsel, has charged approximately
 3 \$ 584,878. If you assume both fees incurred and research charges go hand-in-hand with
 4 the complexity of a case, you could extrapolate a reduction to Heller's research charges as
 5 follows:

| | Heller | Howard Rice |
|--|--|--------------|
| 6 Research Charges | \$ 495,941 | \$ 584,878 |
| 7 Total Fees | \$21,349,914 | \$32,678,362 |
| 8 % of Research to Fees | 2.32% | 1.78% |
| 9 Apply Howard Rice's 1.78 % 10 in research to \$21,349,914 | \$ 382,121 = proportional 11 research cost to that of 12 Heller's total fees | |
| 13 Proposed reduction to 14 Heller | \$ 113,820 | |

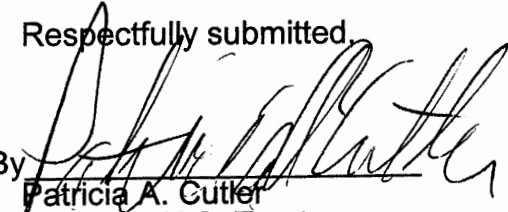
15
 16 It would be reasonable to assume that Howard Rice, as debtor's counsel, dealt with
 17 more issues, such as matters involving the qualifying facilities, preemption, the ratepayer
 18 committee, complex claims situations, complex issues at the confirmation trials and,
 19 therefore, using Howard Rice's percentage of research to total fees is actually being
 20 generous to Heller.

21 **CONCLUSION**

22 Based upon the foregoing, we submit that the Court should reduce fees and costs in
 23 the areas outlined above or require fuller justification.

24 Date: February 5, 2004

25 Respectfully submitted,

26
 27 By 
 28 Patricia A. Cutler
 Assistant U.S. Trustee

1 **PROOF OF SERVICE**

2
3 I, the undersigned, state that I am employed in the City and County of San Francisco, State
4 of California, in the office of the United States Trustee, at whose direction the service was made; that
5 I am over the age of eighteen years and not a party to the within action; that my business address is
6 250 Montgomery Street, Suite 1000, San Francisco, California 94104, that on the date set out below,
7 I served a copy of the attached:

8 **OBJECTION OF U.S. TRUSTEE TO CERTAIN FEES REQUESTED BY MILBANK TWEED AND CERTAIN
9 FEES AND COSTS REQUESTED BY HELLER EHRMAN**

10 **DECLARATION OF PATRICIA A. MARTIN RE UNITED STATE TRUSTEE'S REPORT ON
11 PROFESSIONAL FEES FOR CURRENT PERIOD (8/01/03 - 11/30/03) AND CUMULATIVE CASE TO DATE
12 (4/06/01 - 11/30/03)**

13 by placing such a copy, enclosed in a sealed envelope, with prepaid postage thereon, in the United
14 States mail at San Francisco, California, addressed to each party listed below.

15 James L. Lopes
16 William J. Lafferty
17 Howard Rice Nemerovsky et al.
18 Three Embarcadero Center, 7th Floor
19 San Francisco, CA 94111-4065

20 Robert Jay Moore, Esq.
21 Milbank Tweed Hadley et al
22 601 S Figueroa Street, 30th Floor
23 Los Angeles, CA 90017

24 Alan W. Kornberg, Esq.
25 Brian S. Hermann, Esq.
26 Marc F. Skapof, Esq.
27 Paul, Weiss, Rifkind, Wharton & Garrison
28 1285 Ave of the Americas
New York, NY 10019

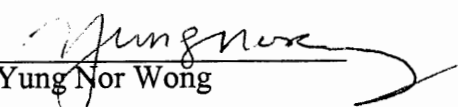
29 Mark A. Edmunds
30 Deloitte & Touche LLP
31 50 Fremont Street
32 San Francisco, CA 94121

33 Peter Benvenuti
34 Marie L. Fiala, Esq.
35 Heller Ehrman White &
36 Mcauliffe LLP
37 333 Bush Street
38 San Francisco, CA 94104

39 Gregg S. Kleiner, Esq.
40 Cooley Godward LLP
41 One Maritime Plaza, 20th Floor
42 San Francisco, CA 94111

43 Thomas E. Lumsden
44 FTI Consulting Inc.
45 353 Sacramento Street, 18th Floor
46 San Francisco, CA 94111

47 I declare under penalty of perjury that the foregoing is true and correct. Executed at San
48 Francisco, California on February 6, 2004.

49 By 
50 Yung Nor Wong