

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re ) Bankruptcy Case  
PACIFIC GAS & ELECTRIC COMPANY, ) No. 01-30923DM  
Debtor. ) Chapter 11

MEMORANDUM DECISION REGARDING APPLICATIONS  
FOR INTERIM COMPENSATION OF PROFESSIONALS

I. Introduction

A hearing was held on October 22, 2001, on interim compensation applications of professionals and a final expense application of the members of the Official Unsecured Creditors' Committee ("Committee"). At the hearing the court considered the applications of five law firms which represent Pacific Gas & Electric Company, the above-named debtor ("Debtor"); Debtor's financial and restructuring advisor; and the Committee's attorneys, accountants, and financial advisors. The court also considered the requests by Committee members for reimbursement of expenses.

During the course of the hearing the court approved, without objection from the United States Trustee ("UST") or anyone else, the application filed by Debtor's attorneys Cooley Godward LLP.

1 It also approved the application of Howard, Rice, Nemerovski,  
2 Canady, Falk & Rabkin, A Professional Corporation ("Howard  
3 Rice").<sup>1</sup> It also approved without objection the application of  
4 Saybrook Capital, LLC ("Saybrook"), the Committee's financial  
5 advisor, and the expense request of the Committee members. Orders  
6 have already been entered consistent with those allowances.  
7 The court took under advisement the remaining applications of the  
8 professionals, and invited further submissions by the UST and  
9 certain of the professionals as reflected on the record. Since  
10 then the court has issued orders allowing without reduction the  
11 fees of Keker & Van Nest, LLP, special counsel to the Debtor, thus  
12 overruling the objections of the UST, and allowing the fees of  
13 Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden"), Debtor's  
14 special regulatory counsel, with a reduction of \$7,287, thus  
15 sustaining, in part, the objections of the UST.

16 Also subsequent to the hearing the court entered orders  
17 allowing the fees of Ernst & Young Corporate Finance LLC ("EYCF"),  
18 Debtor's financial and restructuring advisor, with a total  
19 reduction of \$42,315, and the fees of Heller Ehrman making  
20 adjustments, in part, based upon the court's own concerns and

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21 <sup>1</sup> The UST objected to Howard Rice's fees on one ground: that  
22 its work on the TURN accounting action and on other ancillary  
23 matters substantially overlapped with the work performed by  
24 Heller, Ehrman, White & McAuliffe LLP ("Heller Ehrman"), special  
25 counsel to Debtor. In suggesting a remedy for the purported  
26 duplicative work, however, the UST directed her comments solely at  
27 Heller Ehrman; the UST sought supplementation of Heller Ehrman's  
28 application and reduction of Heller Ehrman's fees in the  
"ancillary services" category. Inasmuch as the UST did not  
specifically object to Howard Rice's fees and instead focused  
exclusively on Heller Ehrman's fees, and to the extent Heller  
Ehrman has supplemented its fee application to address the UST's  
concerns, the court notes that the purported objection to Howard  
Rice's fees is not a meaningful substantive objection.

1 sustaining, in part, the objections of the UST, with a total  
2 reduction of \$18,466.20.

3 Concurrent with the issuance of this Memorandum Decision, the  
4 court is issuing orders dealing with the remaining applications,  
5 namely those of Milbank, Tweed, Hadley & McCloy LLP ("Milbank"),  
6 counsel to the Committee, and PriceWaterhouseCoopers LLP ("PWC"),  
7 accountants and financial advisors to the Committee.

8 In this Memorandum Decision the court explains its reasoning  
9 for the adjustments that have been made and also sets forth some  
10 guidance to the professionals for future compensation applications  
11 that may be filed by these professionals or any others as this  
12 case progresses.<sup>2</sup>

## 13 II. General Considerations

14 The following represents the court's reasoning about items  
15 charged by various professionals in the applications, some or all  
16 of which may be the subject of future requests.

### 17 (a) Airplane Travel Time

18 Under this district's Guidelines For Compensation and Expense  
19 Reimbursement of Professionals and Trustees ("Guidelines"),  
20 promulgated pursuant to B.L.R. 9029-1, Guideline 17 indicates that  
21 airplane travel time is not compensable except for work actually  
22 done during a flight. Guideline 17 further specifies that if  
23 significant airplane travel time is expected in a case, specific  
24 guidelines should be obtained for that case. Some professionals

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25  
26 <sup>2</sup> The court regrets and apologizes to the professionals for  
27 the delay in issuing this Memorandum Decision, particularly if new  
28 applications for compensation for later periods are already being  
prepared. Appropriate adjustments may be necessary on some of  
those applications.

1 have requested fees for time charged for airplane travel time  
2 notwithstanding the clear language of Guideline 17; none of them  
3 requested specific guidelines in advance. For this reason the  
4 court will not allow any of the portions of the applications that  
5 included airplane travel time.<sup>3</sup>

6 Notwithstanding the foregoing, anyone who has traveled since  
7 September 11, 2001, has become painfully aware of the difficulties  
8 and delays now being encountered when venturing forth to an  
9 airport and onto a plane. Thus, for air travel after September  
10 11, 2001, the court will allow actual time charges for up to two  
11 hours per trip between any professional's principal office and the  
12 destination to which that professional must travel on business  
13 involving this case, and likewise up to two hours per return trip.

14 (b) Conflict Checks/Ethical Walls

15 Some professionals have included charges for time expended  
16 identifying and/or clearing conflicts and ascertaining and  
17 documenting their various connections as required by Fed. R.  
18 Bankr. P. 2014(a). Not only do some seek to be paid for clearing  
19 conflicts, they seek further compensation for avoiding conflicts  
20 and preserving confidences. While this type of work is not  
21 overhead in the traditional sense (see Guideline 22),<sup>4</sup> the court  
22 does not believe it is "reasonable" under 11 U.S.C. § 330(a)(1)(A)  
23 for professionals to charge the Debtor's estate for such

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25 <sup>3</sup> This is why Skadden's request was reduced.

26 <sup>4</sup> Thus the cases cited by EYCF in its response to the UST's  
27 objections are not helpful. The court acknowledges that the work  
28 in this category is specific to Debtor's case; that does not make  
it compensable.

1 activities. This is not very different from a firm absorbing the  
2 time expended on its own efforts to secure a new client, for which  
3 the court doubts any professional would bill. Further, as pointed  
4 out by the UST, fees of this nature are routinely disallowed in  
5 this court.<sup>5</sup>

6 (c) File Management

7 While file management is generally part of office overhead  
8 and thus not reimbursable under Guideline 22 (Office Overhead) or  
9 Guideline 18 (Administrative Tasks), the court will allow  
10 reasonable charges under this category upon a proper showing that  
11 the demands of this case require efforts over and above the normal  
12 tasks performed by the professionals as part of their regular  
13 business activities.

14 Nonetheless, the court believes that the use of paralegals or  
15 other para-professionals to perform such clerical tasks is a cost  
16 item, not a profit-generating fee item. As such, the firms shall  
17 be reimbursed the actual cost of obtaining such services. In  
18 other words, to the extent a firm has to hire or devote personnel  
19 to file management, a firm should receive only an hourly fee that  
20 represents the actual hourly pay (plus additional amounts to

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21 <sup>5</sup> The only published case presented to the court on this  
22 issue is In re Bennett Funding Group, Inc., 213 B.R. 234 (Bankr.  
23 N.D.N.Y. 1997). There the court devotes three sentences and no  
24 analysis to the issue, concluding that just over ten thousand  
25 dollars is a reasonable amount for the trustee's counsel to charge  
26 for performing a conflicts check. That is insufficient precedent  
27 or authority to change the practice here. The Ninth Circuit has  
28 recognized that because of the particularly burdensome task of  
preparing fee applications, time expended in preparing those  
applications is compensable. In re Nucorp Energy, Inc., 764 F.2d  
655 (9th Cir. 1985). Unless directed by a higher court or the  
Congress to allow compensation for preparing to become an employed  
professional, the court will not extend Nucorp and allow time  
expended for this type of work.

1 represent benefits and other employers' costs) of that employee.  
2 The court does not know how much the para-professionals are  
3 actually being paid; for the purposes of the current fee  
4 applications the court will allow the firms to recover \$40 an hour  
5 for these para-professionals. This amount presumptively covers  
6 the actual hourly rate paid to these individuals, plus other costs  
7 of their employment. In future fee applications, firms must  
8 adjust their requested fees in accordance with these comments.  
9 The hourly rate for this type of service should not exceed \$40,  
10 unless the applicant demonstrates to the satisfaction of the UST  
11 that the actual direct and indirect costs of employing the  
12 personnel handling file management exceed \$40 an hour. Before the  
13 court will allow an hourly rate in excess of \$40 for this type of  
14 work, the professional applicant will have to certify that it has  
15 provided the UST with evidence justifying a higher rate,  
16 consistent with this decision. If the UST disagrees, she may  
17 object with a representation that the increased rate has not been  
18 justified. No specifics should be filed. If the UST and the  
19 applicant disagree on the proper rate, the court will hold a  
20 hearing as appropriate, after first safeguarding any financial  
21 information the applicant convinces the court should be kept  
22 confidential.

23 (d) Use of Paralegals and Law Students

24 The court will consider charges by paralegals, law students  
25 or others on a case by case basis, mindful of the caution in  
26 Guideline 16 that the use of multiple professionals (including  
27 para-professionals) must be justified.  
28

1           (e) Generic Entries

2           Guideline 13 (Descriptions) requires time entries to identify  
3 the person performing the services, the date performed, what was  
4 done and the subject involved. Notations of telephone calls,  
5 conferences, research, drafting, etc., may result in disallowance.  
6 The court will look with a great deal of skepticism on generic  
7 entries such as "review file," etc.

8           (f) Multiple Professionals

9           Several applicants charged time by multiple professionals to  
10 attend one meeting or one hearing. Guideline 16 states that  
11 "Professionals should be prepared to explain the need for more  
12 than one professional or para-professional from the same firm at  
13 the same court hearing, deposition or meeting. Failure to justify  
14 this time may result in compensation for only the person with the  
15 lowest billing rate."

16          The court acknowledges that in this case, where meetings are  
17 frequent, it would not necessarily be efficient to justify each  
18 meeting involving multiple professionals. Nonetheless, the court  
19 does want a general explanation for the use of multiple  
20 professionals and a specific explanation for any meeting in which  
21 significant fees are incurred. Further, the court will require  
22 justification for the appearance of more than one professional at  
23 any court hearing. In other words, an applicant must identify  
24 each hearing involving multiple professionals and justify  
25 specifically the use of professionals at each such hearing.

26          (g) The Guidelines

27          Following the hearing on the fee applications, one of the  
28 professionals suggested that the court should have held a status

1 conference so that the professionals could know what services and  
2 costs would be compensable. The court notes that its Guidelines  
3 serve this purpose; they clearly define the parameters of  
4 acceptable billing and cost items. The court understands that  
5 many of the firms now seeking compensation actively solicited and  
6 competed for the opportunity to represent the Debtor and the  
7 Committee in this case, knowing that the case was pending in San  
8 Francisco and that the Northern District of California Bankruptcy  
9 Court had adopted the Guidelines. Had the professionals adhered  
10 closely to the Guidelines, many of the objections raised by the  
11 UST would be moot. All applicants should familiarize themselves  
12 with the Guidelines prior to the submission of further fee  
13 applications.

14 (h) Fees For Supplementing Fee Applications

15 The court is allowing many requested fee and cost items based  
16 on supplemental materials provided by applicants after the UST  
17 objected to initial applications. The UST noted at the hearing  
18 (and the court agrees) that it was forced to object to the  
19 applications because some applicants initially failed to provide  
20 adequate narrative or adequate explanations for deviations from  
21 the Guidelines. Had the applicants simply and sufficiently  
22 described the work performed in their initial applications, the  
23 UST would not have been forced to object and the estate would not  
24 have incurred the cost of having the professionals supplement  
25 their fee applications. The UST correctly responded to what it  
26 was provided by the professionals. The court appreciates this  
27 enormous effort by the UST and her staff.

28 Because the estate should not bear the expense of having



1 professionals supplement inadequate applications and because the  
2 applicants should not benefit from their initial failure to comply  
3 with the Guidelines, the court will in the future disallow any  
4 fees and costs associated with the supplementation of the fee  
5 applications. Applicants should heed this directive when  
6 submitting future fee applications, and not request recovery of  
7 such fees.

8 III. Specifics As To Remaining Professionals

9 (a) Milbank

10 The UST objected to Milbank's fees in the following areas:

11 (i) Regulatory Matters

12 The UST complains that Milbank requested \$659,810 for  
13 regulatory and legislative matters, originally describing work in  
14 that area in only three general categories: business operations,  
15 business analysis, and other litigation. The UST correctly points  
16 out that Milbank did not initially provide adequate information to  
17 illustrate the benefits achieved by its efforts, and why those  
18 efforts were necessary. Going further, the UST also correctly  
19 complained about generic descriptions by Milbank such as  
20 "tracking," "review and analysis," and "monitoring."

21 In response, Milbank provided a further description of its  
22 work in the foregoing general area subdivided into thirty-five  
23 categories. But again, as required by Guideline 3, it did not  
24 provide dollar amounts for the work performed in each category.  
25 In his supplemental declaration filed on October 26, 2001, Mr. Feo  
26 acknowledged the confusion and has undertaken to provide more  
27 clarity. In response, the UST then complained that there is heavy  
28 concentration of work in certain matters (e.g., FERC refund

1 settlement procedures; "creditworthiness" issues, etc.) but only  
2 light involvement in others (El Paso proceedings; filed rate  
3 cases; "ring fencing," etc.). The UST then jumps to the  
4 conclusion that this disparate level of work in similar categories  
5 translates into a lack of helmsmanship and a lack of effective  
6 oversight of case strategy.

7 While this is a convenient criticism to make, the court has  
8 no basis to reach the same conclusion. Frankly, it seems more  
9 like spirited advocacy than a thorough analysis that leads the UST  
10 to use such pejorative terms.

11 The court is not able to second-guess the professionals who  
12 have performed the work, particularly in the face of the  
13 Committee's support for Milbank's request and Debtor's lack of  
14 opposition to it. The court cannot know the thought processes or  
15 strategies of the professionals; it can only judge these matters  
16 from an overall sense of reasonableness or unreasonableness. The  
17 fees requested by Milbank for this work are reasonable.

18 That being said, the court is troubled by Milbank's failure  
19 to comply with the Guidelines to the same degree that other  
20 professionals whose applications have come before the court have  
21 done so. While the UST suggests a punitive adjustment of nearly  
22 \$66,000, the court believes some more modest adjustment for  
23 Milbank's failure to comply with the Guidelines, even after its  
24 supplemental filings, is appropriate. Thus, for the vague entries  
25 and lack of specific cost analysis by category, and not based on a  
26 decision assessing the importance of one project versus the lack  
27 of importance of some other project, the court will reduce  
28 Milbank's application by \$15,000. See paragraph II(e) and

1 Guideline 13.

2 (ii) Overlap With Saybrook

3 The court is satisfied that Saybrook and Milbank were brought  
4 into this case to perform different assignments for the Committee,  
5 and that by and large they have done so. As with the difficulty  
6 in analyzing the specific tasks as set forth in the foregoing  
7 subparagraph, the court also finds it virtually impossible to  
8 evaluate the work of the attorneys at Milbank in comparison with  
9 the work of the financial advisors at Saybrook. To the extent  
10 there is some degree of overlap between work performed by these  
11 two professional firms, and perhaps by PWC as well, that is more  
12 likely a natural consequence of the extreme complexity of Debtor's  
13 affairs and this case, a condition that the court will not use as  
14 an offensive weapon to penalize Milbank or any other particular  
15 professional.<sup>6</sup>

16 (iii) Commodities Trading Motion and Public Relations  
17 Firm Motion

18 The court accepts Milbank's explanation regarding the history  
19 of and necessity for these motions. The fees for these services  
20 will be allowed.

21 (iv) Plan Process

22 The court accepts Milbank's explanation regarding the need to  
23 maintain confidentiality concerning the evolution of Debtor's Plan  
24 of Reorganization, and Milbank's contribution to that process.  
25 The fees for these services will be allowed. Nevertheless, as

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26  
27 <sup>6</sup> If and when the UST, the Debtor or the Committee believes  
28 that any professional is taking advantage of the complexity of  
this case in order to generate fees, this issue can be revisited  
by the court.

1 this case progresses, and Debtor supplements and revises its  
2 current Plan of Reorganization and Disclosure Statement, the court  
3 will expect on an on-going basis Milbank's exercise of billing  
4 judgment in making sure that it is not duplicating Debtor's  
5 efforts.

6 (v) Overhead and Administrative Time (Including Use  
7 of Case Clerk

8 The court appreciates that having an attorney review and  
9 delegate in-coming matters is essential and actually a very cost-  
10 effective way to handle the vast legal issues presented. The  
11 court also appreciates that having a case clerk handle the filing  
12 and organization is optimal in a case of this magnitude,  
13 particularly where the firm is not involved in one isolated or  
14 specialized project. The court will allow Milbank to recover file  
15 management and calendaring costs related to its non-lawyer working  
16 on the case. Nevertheless, as indicated in subparagraph II(c),  
17 Milbank shall be entitled to recover only the actual direct and  
18 indirect costs of retaining such a case clerk; the case clerk  
19 shall not be a profit-generating entity. For the purposes of this  
20 application, the court will allow an hourly rate of \$40 as  
21 reasonably representing the actual direct and indirect costs of  
22 employing a case clerk. See subparagraph II(c).

23 According to the UST, Milbank charged \$100 an hour for 314.8  
24 hours in services provided by its case clerk. The court will  
25 allow Milbank to recover \$12,592 (314.8 hours at \$40 an hour), and  
26 will disallow \$18,888 in fees charged in this category.

1 (vi) Non-working Travel Time

2 For the reasons discussed in subparagraph II(a), the court  
3 will disallow Milbank's travel charges in the amount of \$37,256.

4 (vii) Printer

5 In response to the UST's objections, Milbank withdrew its  
6 charge of \$3,275 for a printer. This amount will be deducted from  
7 the costs allowed.

8 Based on the foregoing, Milbank's requested fees will be  
9 reduced by \$71,144 and its requested costs will be reduced by  
10 \$3,275.

11 (b) Heller Ehrman

12 The UST objected to charges for some of the services  
13 performed by Heller Ehrman relating to the TURN accounting action,  
14 Heller Ehrman's "ancilliary services," work that appeared to  
15 overlap that performed by Keker & Van Nest LLP on  
16 "seller/generator issues," and finally what the UST called  
17 administrative time billed by various paralegals and members of  
18 Heller Ehrman's staff.

19 The court is satisfied from the explanations presented at the  
20 hearing and the declaration of Robert L. Bordon, Deputy General  
21 Counsel of Debtor, that Heller Ehrman's work on the three  
22 substantive matters mentioned above are not duplicative, were  
23 necessary, and that the charges Heller Ehrman has submitted for  
24 that work are reasonable. Thus to the extent the UST persists in  
25 her objection for these categories of work, the objection is  
26 overruled.

27 The more difficult analysis comes about because the court  
28 must examine the UST's remaining objection, namely, charges by

1 various non-lawyers within Heller Ehrman for work they have  
2 performed in this case. The court is not unmindful of Mr.  
3 Bordon's complete satisfaction with Heller Ehrman's work in this  
4 regard. That being said, the court also appreciates the thorough  
5 analysis of these charges made by the UST and her concern over the  
6 possibility that general overhead work is being billed under the  
7 guise of para-professionals. The UST correctly refers to  
8 Guideline 5, requiring that para-professionals be identified by  
9 their qualifications, that their services reflect specialized  
10 training, and that they perform services that might normally be  
11 done by a professional.

12 The court has reviewed carefully the time records of the six  
13 individuals identified within the Heller Ehrman application and  
14 questioned by the UST. As noted in subparagraph II(d), the court  
15 must examine work of this nature on a case by case basis.

16 (i) David Luster, senior litigation paralegal.

17 Mr. Luster is highly qualified and his declaration  
18 demonstrates his enormous value to the firm and to his client, the  
19 Debtor. His billing rate of \$140 an hour is reasonable. What is  
20 troublesome about his charges, however, are that his time entries  
21 are nondescriptive. See Guideline 13 and subparagraph II(e). In  
22 particular, he has expended what the court estimates to be 35.8  
23 hours doing what Mr. Luster himself describes as reviewing daily  
24 newspapers and other publications carrying articles about Debtor  
25 and the California energy crisis, and circulating these articles  
26 to attorneys within the firm. The court cannot figure out why a  
27 person of Mr. Luster's experience and value should be doing the  
28 kind of work that no doubt could be done by in-house personnel at

1 Debtor who are in media relations and public relations, or, as  
2 suggested by the UST, are to be found either within Debtor's or  
3 Heller Ehrman's library staff. Further, Mr. Luster's time entries  
4 include 9.9 hours in performing work described as reviewing  
5 appellate rules. This task has not been justified. The court has  
6 disallowed the aggregate of 45.7 hours, or \$6,398 for these  
7 charges.<sup>7</sup>

8 (ii) M. Brett Stone, litigation paralegal.

9 Mr. Stone's resume, accompanying the Certification of Peter  
10 J. Benvenutti, does not establish his credentials or professional  
11 experience sufficiently to convince the court that his work should  
12 be billed at \$90 per hour. While the court accepts the  
13 representations of Mr. Bordon and Heller Ehrman concerning the  
14 need to staff the Debtor's projects specifically, this hourly rate  
15 is not justified. For this work the court will permit an hourly  
16 rate of \$40. See subparagraph II(c). Based upon Mr. Stone's time  
17 entries assembled by the UST of 25 hours, totaling \$2,250, an  
18 adjustment to the reduced hourly rate of \$40 resulted in a  
19 reduction of the requested fees by \$1,250.

20 (iii) Cheryl Morris, litigation paralegal.

21 Ms. Morris' credentials establish her entitlement to be  
22 billed at her hourly rate of \$68, even though some of her duties  
23 are secretarial in nature. The time charges are reasonable and no  
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25 <sup>7</sup> Mr. Luster and others at Heller Ehrman and other firms  
26 involved should consider avoiding reductions in the future by  
27 departing from the practice of using the same routine entries for  
28 their charges. The professionals in Heller Ehrman and most of the  
other firms coming before the court have adequately complied with  
Guideline 13, and there is no reason why the para-professionals  
should not do so also.

1 adjustment will be made for her work.

2 (iv) Ann Constantine, senior paralegal manager.

3 Ms. Constantine's credentials justify her hourly rate and her  
4 work falls within the category contemplated by Guideline 5. The  
5 time charges are reasonable and no adjustment will be made for her  
6 work.

7 (v) Nneka Nwosu, litigation paralegal.

8 Ms. Nwosu's resume does not establish that she is entitled to  
9 billed as a paralegal. Further, Heller Ehrman has not explained  
10 how her time can be charged at \$113 an hour. The work she has  
11 performed is more clerical and administrative in nature. It is  
12 not that of a trained paralegal. The UST has identified 93.4  
13 hours, which at \$113 an hour amounts to charges totaling  
14 \$10,554.20. As with Mr. Stone above, Ms. Nuosu's has been allowed  
15 at \$40 an hour, resulting in fees of \$3,736, and a reduction of  
16 \$6,818.20. See subparagraph II(c).

17 (vi) Jennifer Lynne Gordon, litigation & corporate  
18 paralegal.

19 Ms. Gordon's credentials justify her hourly rate and her work  
20 falls within the category contemplated by Guideline 5. The time  
21 charges are reasonable and no adjustment will be made for her  
22 work.

23 The certification of Peter J. Benvenutti acknowledges that  
24 approximately \$4,000 has been billed for airplane travel time.  
25 Heller Ehrman's fees have been reduced by \$4,000 for this time.  
26 See subparagraph II(a).

27 Based upon the foregoing, Heller Ehrman's requested fees have  
28 been reduced by \$18,466.20. An order allowing fees in the amount



1 of \$2,095,773.32 and expenses in the amount of \$150,554.49 was  
2 issued on November 21, 2001.

3 (c) PWC

4 The UST objected to PWC's fee application in the following  
5 areas:

6 (i) Use of Multiple Professionals

7 Except for the specific exceptions noted below, PWC has  
8 justified the use of multiple professionals at various meetings.  
9 Neither the court nor the UST attended these meetings and cannot  
10 second-guess the professional judgment of PWC that key personnel  
11 with differing expertise needed to be present. The court assumes  
12 that while the PWC professionals were "multi-tasking" at the  
13 meetings, all such tasks involved PG&E and not other matters.<sup>8</sup> If  
14 the applications hinted at unnecessary duplication, the court  
15 assumes that the debtor -- who is paying the bills of these  
16 professionals -- would object. The court will therefore allow all  
17 fees where multiple professionals attended hearings, except those  
18 identified below (in which case no satisfactory explanation was  
19 provided or the meetings appear to involve delegation of work as  
20 opposed to matters involving accounting and financial expertise of  
21 the participants). See subparagraph II(f) and Guideline 16.

22 With respect to the meetings identified below, only the fees  
23 of Thomas Lumsden will be allowed. The court will also disallow  
24 fees where multiple professionals attended court hearings.

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26  
27 \_\_\_\_\_  
28 <sup>8</sup> The court would question the ethics of any professional  
billing two different clients for the same time.

1 Disallowed Fees:

2 April 18, 2001 (Staff Meeting)

3 Theodore Huang (\$570)  
4 Floris Iking (\$475)  
5 Margery Neis (\$617.50)  
6 David Ortwein (\$380)  
7 Ryan Perfit (\$380)  
8 Allison Young (\$712.50)

9 July 3, 2001 (Staff Meeting)

10 James Drzemiecki (\$445.50)  
11 Mike Hamilton (\$576)  
12 Margery Neis (\$292.50)  
13 Wesley Smyth (\$270)  
14 Allison Young (\$337.50)

15 July 16, 2001 (Exclusivity Conference Call)

16 Rocky Ito (\$225)  
17 Freddie Reiss (\$297.50)

18 May 8, 2001 (Court Hearing)

19 Rocky Ho (\$630)  
20 Freddie Reiss (\$833)

21 May 24, 2001 (Court Hearing)

22 Rocky Ho (\$3,105)

23 June 5, 2001 (Court Hearing)

24 Mike Hamilton (\$1,536)  
25 Freddie Reiss (\$1,071)

26 July 13, 2001 (Court Hearing)

27 Mike Hamilton (\$896)

28 July 23, 2001 (CPUC Hearing)

David Ortwein (\$620)

In total, the court will disallow \$14,270 for use of multiple professionals at meetings and hearings.

(ii) Financial Grid Modeling

The court is satisfied from the explanation provided by Mr. Lumsden that these services were reasonable and necessary. No

1 adjustment will be made.

2 (iii) Creation of Extranet Website

3 The court is satisfied from the explanation provided by  
4 Mr. Lumsden that these services were reasonable and necessary. No  
5 adjustment will be made.

6 (iv) Travel

7 The court acknowledges that PWC has made some voluntary  
8 adjustments with respect to time billed for travel. Nonetheless,  
9 PWC must still follow the Guidelines. See subparagraph II(a).  
10 Therefore, the court will disallow \$52,315 in fees incurred for  
11 travel time.

12 (v) Conflict Checks and Ethical Walls

13 The court will disallow fees relating to conflict checks and  
14 ethical walls. See subparagraph II(b). The court will therefore  
15 disallow \$55,587 in fees.

16 (vi) Creation of Time and Billing System

17 PWC conceded the UST's objection that building a time-keeping  
18 system cannot be billed to the estate. Similarly, the actual  
19 clerical input of time into time records should not be billed to  
20 the estate. The court will therefore disallow the \$63,850 in fees  
21 attributable to this project.

22 Based on the foregoing, PWD's requested will be reduced by  
23 \$186,022.

24 (d) EYCF

25 At the hearing on October 22, 2001, the representative of  
26 EYCF was given time to submit a further description of work  
27 performed by his firm. The UST was given seven days thereafter to  
28 respond. On November 2, 2001, the UST filed a Reply in respect of

1 several of the professionals' applications, including that of  
2 EYCF. In that Reply the UST responded only to the EYCF arguments  
3 concerning conflicts, or "connections" checks. From this the  
4 court concludes that EYCF has no intention of submitting any  
5 further information concerning the nature and extent of the work  
6 it performed.

7 EYCF asked for \$50,000 for a category described as "Firm  
8 Retention." Apparently it sought even more, but entered into a  
9 compromise with Debtor, fixing the amount for this category at  
10 \$50,000.<sup>9</sup> Nevertheless, the UST determined that within the time  
11 entries totaling \$50,000, charges totaling \$29,705 should be  
12 disallowed. The court agrees with the UST for the reasons stated  
13 in subparagraph II(b); it also observes that the balance in this  
14 category, in excess of \$20,000, probably is itself overly generous  
15 but will not be reduced further.

16 Category 12 of the EYCF application is entitled "Analysis Of  
17 Bankruptcy Schedules And Statement Of Financial Affairs." A total  
18 of \$63,527.50 was sought for this work, resulting in a blended  
19 hourly rate of approximately \$495. Within that total, however,  
20 are 54.9 hours charged by two of the three highest hourly rate  
21 professionals of EYCF who have worked on this case. While the  
22 court acknowledges again (as it has many times throughout this  
23 case) that this case is exceedingly complex and no doubt presents  
24 almost unprecedented problems in every aspect of case  
25 administration and legal issues to be encountered, EYCF has still

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26  
27 <sup>9</sup> This amount represents approximately 9% of the total  
28 amount sought by EYCF, an extraordinarily large percentage of the  
total request under the circumstances.

1 not justified why professionals at the top of the billing ladder  
2 must spend over 40% of the time on this project. The court has  
3 reduced the amount requested in this category by \$6,500,  
4 calculated by taking the time spent by those two highest priced  
5 professionals and adjusting it to the overall blended rate for  
6 EYCF's work during the period covered by the First Interim Fee  
7 Application.

8 EYCF has charged \$6,110 in Category 55 for preparing for and  
9 participating in the education of Debtor's employees about  
10 bankruptcy terms and procedures. The court is not satisfied that  
11 this is a necessary task to be performed by Debtor's financial and  
12 restructuring advisor given the Debtor's highly capable in-house  
13 legal staff and outside bankruptcy counsel. \$6,110 has been  
14 disallowed for this work.

15 Based on the foregoing, EYCF's fees have been reduced by  
16 \$42,315. An order allowing fees in the amount of \$513,967.50 was  
17 issued on November 21, 2001.

18 IV. Conclusion

19 With the exception of Milbank and PWC, the court has already  
20 entered orders on the various applications for interim  
21 compensation addressed in this Memorandum Decision. Concurrent  
22 with the issuance of this Memorandum Decision, the court is  
23 entering orders allowing the fees and expenses, as adjusted, of  
24 Milbank and PWC.

25  
26 Dated: December 12, 2001

27 S/ \_\_\_\_\_  
28 Dennis Montali  
United States Bankruptcy Judge