

Decision S4 08 021

AUG 1 1984

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND )  
ELECTRIC COMPANY to enter into an )  
additional Nuclear Fuel Lease and ) Application 84-05-088  
to modify an earlier decision ) (Filed May 23, 1984)  
approving a Nuclear Fuel Financing.)

O P I N I O N

By Decision (D.) 92555 dated December 30, 1980 in Application (A.) 60046, modified by D.82-04-077 dated April 21, 1982 in A.82-02-018, Pacific Gas and Electric Company (PG&E) was authorized under Public Utilities (PU) Code Sections 701, 816 through 818, 830 and 851 to enter into and continue a nuclear fuel financing with Pacific Energy Trust (Energy).

In this application for further modification of D.92555, PG&E requests authority to increase the credit limit available to Energy from \$400,000,000 to \$450,000,000, through the execution of an additional Nuclear Fuel Lease (1984 Lease) and related modifications to the existing Nuclear Fuel Lease (1981 Lease) and certain other documents. Also, PG&E requests authority to execute, deliver, and perform a Promissory Note increasing the present note from \$160,000,000 to \$180,000,000, an increase of \$20,000,000, to Energy and to continue to be exempted from the Commission's competitive bidding rule.

Summary of Decision

This decision grants PG&E the authority requested in the application. The decision grants the authority to amend and continue PG&E's 1981 Lease and certain other documents, to increase the credit limit available to Energy from \$400,000,000 to \$450,000,000 and to modify Ordering Paragraph 3 of D.92555, to allow PG&E to issue a Promissory Note in an amount not to exceed \$180,000,000.

Notice of the filing of the application for modification of D.92555 appeared on the Commission's Daily Calendar of May 25, 1984. No protests have been received.

PG&E, a California corporation, operates as a public utility under the jurisdiction of this Commission. Principally, PG&E generates, purchases, transmits, and sells electric energy, and purchases, transports, distributes, and sells natural gas to 47 counties in central and northern California. Also, PG&E provides a small amount of incidental water and steam services.

By D.92555, later modified by D.82-04-077, PG&E was authorized under PU Code Sections 701, 816 through 818, 830 and 851 to do the following:

1. To enter into the 1981 Lease with Newton I. Waldman, as Co-Trustee of Energy, through which PG&E would lease nuclear fuel;

2. To borrow from Energy on a revolving credit basis an amount up to \$160,000,000 but not to exceed an amount equal to the investment in nuclear fuel then being leased and to issue a Promissory Note exempt from the Commission's competitive bidding rule, to Energy, to evidence any such debt;
3. To execute a Consent and Agreement (1981 Consent and Agreement) with certain banks where such an agreement is a prerequisite to Energy's borrowing from the banks in an aggregate amount not to exceed \$400,000,000 to finance:
  - a. Energy's purchase of not to exceed \$500,000,000 of nuclear fuel to be leased to PG&E; or
  - b. Energy's loans to PG&E of up to \$160,000,000, but not to exceed the amount of nuclear fuel then being leased; and
4. To be authorized upon the termination of Energy, and upon certain conditions, to assume certain obligations and to succeed to certain rights.

PG&E entered into the 1981 Lease with Energy on February 4, 1981 by transferring to the Co-Trustee of Energy, PG&E's rights, title and interest to its nuclear fuel and to certain contracts concerning nuclear fuel. As of March 31, 1984, PG&E had approximately \$407,000,000 of nuclear fuel (including financing costs) subject to the 1981 Lease.

The Commission approved PG&E's lease of nuclear fuel in accordance with the terms and conditions of the 1981 Lease (D.92555 dated December 30, 1980 in A.60046). This approval was granted under PU Code Section 701. At that time, the Commission determined that the 1981 Lease did not involve a commitment by PG&E as guarantor or issuer of indebtedness within the meaning of PU Code Sections 816 through 818, 830 and 851.

The 1984 Nuclear Fuel Financing

PG&E is currently participating in negotiations to amend the 1981 Lease and related credit agreement (1981 Credit Agreement) and security agreement (1981 Security Agreement) and to establish the additional 1984 Lease between Energy and PG&E, and a new credit agreement (1984 Credit Agreement) between Energy and The Chase Manhattan Bank, N.A. (Chase). The 1984 Credit Agreement would provide an additional \$50,000,000 credit facility to Energy. This would increase the total credit available to Energy from \$400,000,000 to \$450,000,000.

The terms of the 1984 Lease are substantially the same as the terms of the 1981 Lease. The 1984 Lease requires the same rental payment procedures (Basic Rent, Additional Rent and Advance Rent) and other terms of the 1981 Lease that were described in

A.60046. Energy's rights under the 1984 Lease, including the payment of rent, are pledged to secure borrowings under the 1984 Credit Agreement. They are separate from the payments under the 1981 Lease which are pledged to the original banks.

Similar to the 1981 Lease, the more important provisions of the 1984 Lease include:

1. Energy will have the right, title, and interest to a portion of the nuclear fuel inventory and to certain contracts concerning nuclear fuel which it has entered or may thereafter enter.
2. Energy shall thereafter pay such amounts as become due and payable under these assigned contracts.
3. Energy shall reimburse PG&E for all amounts paid by PG&E and for the costs it incurred in obtaining these rights.
4. PG&E will retain all rights and responsibilities regarding the nuclear fuel, other than the making of payments and holding title to it.
5. For the term of the 1984 Lease, PG&E will lease a portion of the nuclear fuel owned and to be owned by Energy.
6. The 1984 Lease, unless terminated earlier, shall terminate five years from the date of execution.

The 1984 Lease is a full net lease which means that PG&E will be responsible for operating, maintaining, repairing, replacing, and insuring the nuclear fuel and for paying all taxes and costs arising out of the ownership, possession, or use of the nuclear fuel.

PG&E's lease payments include:

1. Basic Rent - A charge payable quarterly in arrears and calculated to represent the investment of Energy in the nuclear fuel consumed while the unit is producing heat and a daily financing charge for the period allocated to the unit, but excluding daily financing charges capitalized and added to investment;
2. Additional Rent - All other payments PG&E agrees to make, other than Basic Rent and Advance Rent; and
3. Advance Rent - PG&E shall pay Advance Rent upon Energy's request in certain specified circumstances when Energy does not have sufficient funds and cannot obtain the funds from alternative sources and in amounts sufficient to allow Energy to meet its obligations.

PG&E retains the sole obligation regarding storage and distribution of spent fuel. Within a reasonable time after the leased nuclear fuel has become spent fuel, Energy shall transfer its right, title, and interest in the spent fuel to PG&E.

Additionally, at any time, and at its option, PG&E may cause Energy to transfer all or a part of Energy's right, title, and interest in nuclear fuel to PG&E.

Energy agrees, upon PG&E's request, to exercise its rights under the 1984 Credit Agreement to borrow funds to enable Energy to carry out its obligations under the 1984 Lease and, with certain exceptions, to consent to or join in any consent with respect to the nuclear fuel contracts.

At any time, PG&E may, upon five days' written and delivered notice, terminate the 1984 Lease. Energy may terminate the 1984 Lease under certain circumstances, including:

1. If it notifies PG&E that Energy is of the opinion that it faces potential liability arising out of Energy's interest in the nuclear fuel subject to the 1984 Lease, for which Energy is not fully insured, and this notice is not rescinded within 15 days;
2. If Energy becomes subject to certain adverse interpretations, rules, regulations or declarations with respect to its status or the conduct of its business; or
3. If there is a nuclear incident of sufficient magnitude.

Energy has alternative termination rights upon certain events of default (Events of Default). These Events of Default, include, among other matters:

1. The insolvency of PG&E;

2. The failure of PG&E to perform its payment or other obligations under the 1984 Lease, including specifically its obligations relating to insurance under Section 12 of the 1984 Lease; and
3. The failure by PG&E to pay any indebtedness or borrowed money exceeding an aggregate of \$10,000,000 when due, if such failure shall continue after any applicable grace period relating to the indebtedness.

To the extent the nuclear fuel being leased is, or becomes eligible: (a) for the work incentive credit; (b) for the investment credit; or (c) for the service credit under the Internal Revenue Code, at PG&E's request, Energy shall elect to treat PG&E as having acquired the nuclear fuel and shall provide PG&E with an appropriate credit election.

The 1984 Credit Agreement, which provides the method for Energy to finance its obligations under the 1984 Lease is similar in structure to the 1981 Credit Agreement, described in D.92555, with three significant exceptions:

1. The 1984 Credit Agreement would allow only direct bank borrowings. There would be no provision for a letter of credit to support the sale of commercial paper. Instead of borrowing at rates linked to the commercial paper rate, Energy would borrow under the 1984 Credit Agreement at rates tied to



Chase's certificate of deposit rate.<sup>1/</sup>  
Both are competitive money market rates  
and PG&E believes that they should  
yield close to equivalent financing  
costs for Energy.

2. The 1984 Credit Agreement would have only a five-year term to maturity. With the projected commencement of operations at the Diablo Canyon Nuclear Power Plant, PG&E believes that this term should be sufficient to bring Energy's investment in nuclear fuel within the limits of the 1981 Credit Agreement.
3. The commitment fee in the 1984 Credit Agreement would be  $\frac{3}{8}$  of 1% per annum on any unused portion of the \$50,000,000 commitment. The equivalent fee under the 1981 Credit Agreement is  $\frac{1}{8}$  of 1% per annum. PG&E states that Energy will attempt to fully utilize the 1984 Credit Agreement first to reduce costs.

#### Amendments to the 1981 Nuclear Fuel Financing

The 1981 Credit Agreement provides a method for Energy to finance its obligations under the 1981 Lease. Energy finances its purchase of the nuclear fuel leased to PG&E through issuance of its own commercial paper and/or through direct loans from certain banks. The \$50,000,000 increase in the credit available to Energy will require certain modifications to the 1981 Credit Agreement.

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<sup>1/</sup> On July 10, 1984, Chase's certificate of deposit rate was 11.2%.

1981 Security Agreement, 1981 Lease, and ratification of the 1981 Consent and Agreement. Except for the limited changes discussed below, these documents will remain similar in all material respects to those executed in connection with the original transaction.

Attached to the application, in substantially final form, as Exhibit E is Lease Amendment No. 2, which provides that the limitation on the total nuclear fuel investment of Energy will be increased from \$500,000,000 to \$600,000,000 and that nuclear fuel may be released from the 1981 Lease by paying an amount equal to its net investment. |✓

Attached to the application, in substantially final form, as Exhibit F is Credit Agreement Amendment No. 3, which will allow Energy to enter into the additional financing and use the proceeds from the 1981 Credit Agreement to pay principal, interest and other costs incurred under the 1984 Credit Agreement. |✓

Attached to the application, in substantially final form, as Exhibit G is Security Agreement Amendment No. 1, which will recognize the rights of Energy and Chase under the 1984 Lease and 1984 Credit Agreement, including the right of Chase to receive all payments under the 1984 Lease, while retaining to the existing banks a security interest in the nuclear fuel subject to the 1984 Lease. |✓

Attached to the application, in substantially final form, as Exhibit H is a Consent to be executed by PG&E as an inducement for the existing banks to enter into the Amendment No. 3 to the 1981 Credit Agreement. ✓

The application states that the increase in the credit limit available to Energy from \$400,000,000 to \$450,000,000 will allow Energy to loan a maximum of \$180,000,000 to PG&E under the terms of the 1981 Credit Agreement, but not to exceed the amount of nuclear fuel being leased or 40% of the value of Energy's total assets when taken together with the value of other investment securities. PG&E states that a loan to PG&E pursuant to the 1981 Credit Agreement would only be done to enable Energy to minimize the amount of commitment fees and other charges it would pay the banks in connection with the financing of the 1981 Lease. PG&E states that it would use any funds made available through this 1981 Credit Agreement for the purpose of partially reimbursing its treasury for past construction expenditures.

Economic Justification

The Commission previously recognized certain advantages to leasing nuclear fuel in D.92555.<sup>2/</sup> In the application, PG&E states that the increase to a combined total of \$450,000,000 of nuclear fuel subject to the 1981 Credit Agreement and the 1984 Credit Agreement also will increase the amount of financing cost savings and the amount of resultant revenue savings. The anticipated savings reflecting the \$450,000,000 nuclear fuel lease commitment are summarized in the application as follows:

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<sup>2/</sup> Advantages to leasing nuclear fuel also were recognized by the Commission in Southern California Edison Company's D.93857 dated December 15, 1981 in A.60995; D.90380 dated June 5, 1979 in A.58791; and D.87961 dated October 12, 1977 in A.57379.

	<u>Revenue Requirements</u>	
	<u>Lease</u>	<u>Ownership</u>
Nuclear Fuel Lease Commitment		
Financing Cost	\$450,000,000	\$450,000,000
Rate of Return Effect (Pre-Tax)		
Lease	11.2% (a)	
Ownership		14.5% (b)
Annual Financing Cost	\$ 50,400,000	\$ 65,250,000
Present Value of Annual		
Financing Costs		
6/1/84 through 1/1/2031 (c)	\$346,987,000	\$450,000,000

Footnotes:

- (a) Includes: Commercial paper -10.7% (May 1984),  
Fee for Letters of Credit - .5%, Total - 11.2%.
- (b) Estimated cost to PG&E of long-term mortgage bonds,  
May 1984.
- (c) Discounted at 14.5%.

Commission Jurisdiction

At PG&E's request, the Commission, while finding the 1984 Lease to be a "true lease", asserts its jurisdiction over the 1984 Lease pursuant to the general provisions of PU Code Section 701. In addition to the 1981 Lease, the Commission assumed jurisdiction of a similar lease transaction of Southern California Edison Company in D.90380 dated June 5, 1979 in A.58791. PU Code Section 701 grants the Commission broad power to do all things necessary and convenient in the exercise of its general power and jurisdiction to supervise and regulate public utilities and to keep rates reasonable. Since this Commission has general jurisdiction over PG&E and regulates its rates and business, PG&E urges that this Commission take jurisdiction over the 1984 Lease. The financial importance of the 1984 Lease and the essential nature of the leased material make the 1984 Lease a different type of transaction than any type of fuel acquisition or lease typically engaged in by a public utility.

As we found in the decision involving the 1981 Lease, this Commission's jurisdiction over the 1984 Lease could be premised on its authority (a) to insure adequate fuel supply, (b) to maintain adequate electric service, and (c) to set reasonable rates insofar as leasing is less costly than ownership.

PG&E has established that the 1984 Lease may result in significant savings as compared to the cost of outright purchase of nuclear fuel.

There is a clear line of decisions holding that the Commission does not have jurisdiction over transactions in which the utility is a lessee. We have departed from that holding only in connection with nuclear fuel leases because of the financial importance of the lease and the essential nature of leased nuclear fuel. These special circumstances exist with respect to the 1984 Lease transactions. Under the circumstances, we will confirm our prior holdings that the routine lease transactions of public utilities are not subject to our jurisdiction under PU Code Sections 816 through 818, and 830 but we will assert jurisdiction over nuclear fuel leases under PU Code Section 701.

The Commission's Revenue Requirements Division has reviewed the application and finds the 1984 financing transaction to be essentially similar to the prior nuclear fuel financings. The Division has no objection to granting PG&E authority to enter into the 1984 Lease and the related documents and to make the necessary amendments to the 1981 Lease and related documents, thereby increasing the credit limit available to Energy from \$400,000,000 to \$450,000,000, nor does it object to PG&E's request

to modify D.92555, as amended by D.82-04-077, to allow an increase in the amount of its Promissory Note from \$160,000,000 to \$180,000,000. The Division has analyzed the 1984 Lease and has concluded that the 1984 Lease is a true lease and is not a commitment or guarantee of indebtedness and the Division has no objection to the execution, delivery, and performance of the 1984 Lease. However, the Revenue Requirements Division is not recommending that the leasing of nuclear fuel is necessary or reasonable nor that the expenditures are reasonable in amount. These are issues normally tested in general rate or energy cost adjustment clause proceedings.

Findings of Fact

1. PG&E, a California corporation, operates as a public utility under the jurisdiction of this Commission.
2. The 1984 Lease is a true lease and involves no commitment by PG&E as guarantor or issuer of indebtedness within the meaning of PU Code Sections 816, 817, 818, or 830.
3. The 1984 Lease may permit PG&E to acquire nuclear fuel at significantly less cost than would be required for outright purchase of such fuel.
4. The increase in the nuclear fuel subject to the 1981 Credit Agreement and the 1984 Credit Agreement to an aggregate amount of \$450,000,000 may increase the amount of financing cost savings and the amount of resultant revenue savings to PG&E and its ratepayers.



5. The amendments to the 1981 Lease and related documents are necessary in order for Energy to enter into the 1984 Lease and related transactions.

6. The money, property or labor to be procured or paid for by the funds PG&E may obtain in borrowings under the Promissory Note are reasonably required for the purpose specified in the application.

7. There is no known opposition and no reason to delay granting the authority requested.

Conclusions of Law

1. PU Code Section 701 grants this Commission jurisdiction over the 1984 Lease and to approve the 1984 Lease.

2. This Commission has jurisdiction over the 1984 Lease, and over the Promissory Note, and the Consent, and jurisdiction to approve the 1984 Lease, the amendments to the 1981 Lease, the increase in the maximum amount of the Promissory Note to \$180,000,000 and to approve the Consent.

3. A public hearing is not necessary.

4. The application should be granted to the extent set forth in the order which follows.

The actions taken are for the purpose of this proceeding only and are not to be construed as indicative of the amount of expenditures, if any, under the 1984 Lease which shall be approved as proper operating expenses in current or subsequent proceedings for the determination of just and reasonable rates. These authorizations should not be construed as indicative of the treatment which the Commission will accord to nuclear fuel acquisition arrangements to be undertaken by PG&E or other utilities with respect to other nuclear generating facilities.

The following order should be effective on the date of signature and payment of the fee set by PU Code Section 1904(b), to enable PG&E to proceed with the nuclear fuel financing expeditiously.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E), on or after the effective date of this order, is authorized to lease nuclear fuel in accordance with terms and conditions substantially consistent with the Nuclear Fuel Lease, attached to the application as Exhibit B and the other documents attached to the application, as Exhibits C and D.

2. PG&E, on or after the effective date of this order, is authorized a modification of D.92555 dated December 30, 1980 in A.60046, to continue to lease nuclear fuel in accordance with terms and conditions substantially consistent with those contained in the various documents attached to the application as Exhibits E, F, G, and H, and to increase the credit limit available to Pacific Energy Trust (Energy) from \$400,000,000 to \$450,000,000.

3. Ordering Paragraph 3 of D.92555 is modified to authorize PG&E, on or after the effective date of this order, to execute, deliver, and perform a Promissory Note in an amount up to \$180,000,000 aggregate principal amount, exempt from the Commission's competitive bidding rule, to Energy.

4. D.92555, as amended by D.82-04-077, shall remain in full force and effect except as modified by this order.

5. The authority granted by this order shall become effective when PG&E pays the additional fee of \$10,000 set by PU Code Section 1904(b) for the \$20,000,000 increase in the maximum amount of the Promissory Note delivered to Energy. In all other respects, this order is effective today.

6. The application is granted as set forth above.

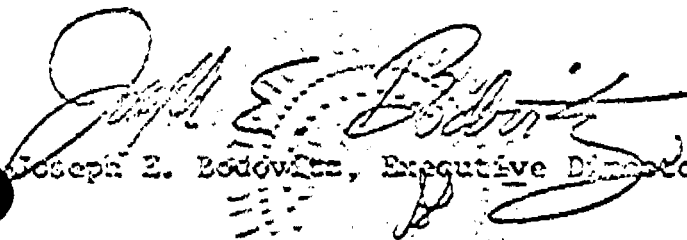
Dated AUG 1 1984, at San Francisco, California.

Commissioner Priscilla C. Grew.  
being necessarily absent, did  
not participate

Commissioner William T. Bagley  
being necessarily absent, did  
not participate.

LEONARD M. GRIMES, JR.  
President  
VICTOR CALVO  
DONALD VIAL  
Commissioners

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.

  
Joseph E. Bodovitz, Executive Director

