

Decision 89-10-029      October 12, 1989

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS & )  
ELECTRIC COMPANY (U 39 M) )  
Requesting Approval of a )  
Proposed Investment Manager )  
Agreement with RCM Capital )  
Management. )

Application 89-09-010  
(Filed September 6, 1989)

O P I N I O N

Summary of Decision

This decision grants Pacific Gas and Electric Company (PG&E) the approval requested in its application.

PG&E has requested the California Public Utilities Commission (Commission) to approve the proposed Investment Management Agreement with RCM Capital Management (RCM) and to authorize the Acting Executive Director to sign such Agreement on behalf of the Commission.

Since 1905, PG&E has operated as a public utility corporation, organized under California law. It is engaged primarily in the business of furnishing electric and gas service in northern and central California.

In Decision No. (D.) 87-05-062, the Commission required externally managed trust funds to finance the decommissioning of nuclear power plants. In accordance with the guidelines set forth in that Decision, PG&E met with the Commission staff and developed trust agreements for its nuclear decommissioning costs. Since the inception of the PG&E trusts, M. D. Sass Investors Services, Inc. (M. D. Sass) has been the sole Investment Manager directing the investment of its trust fund assets. By this application, PG&E is requesting the approval of an agreement with a second Investment Manager.

Background

In Order Instituting Investigation No. 86 (OII 86), the Commission conducted an extensive investigation into alternative

methods of financing the ultimate cost of decommissioning the nuclear power plants owned by California utilities. In D. 87-05-062, the Commission adopted an externally managed trust fund as the vehicle for accruing funds for the decommissioning of the nuclear power plants. In that decision, the Commission also established guidelines for these trust agreements.

In response to D. 87-05-062, PG&E met with the Commission staff and developed trust agreements for its nuclear decommissioning costs in accordance with the guidelines set forth in that Decision. One trust agreement was established as the vehicle to hold the decommissioning funds which qualify for an income tax deduction under Section 468A of the Internal Revenue Code (Qualified Trust) and the other was designed to hold the remaining funds (Nonqualified Trust). On November 25, 1987, PG&E's Trusts were approved by the Commission and executed shortly thereafter.

Both Trusts provide for the establishment of the Nuclear Facilities Decommissioning Master Trust Committee (the Committee) consisting of five members, at least three of which cannot be employees, officers, directors, or agents of the Company. Pursuant to the Trusts, and subject to Commission approval of the Investment Manager Agreement, the Committee is authorized to appoint one or more Investment Managers to direct the investment of all or part of the Trust assets.

On December 17, 1987, the Commission approved the appointment by the interim Committee (composed of five company employees, prior to Commission confirmation of the current Committee) of M. D. Sass to direct the investment of the Qualified and Nonqualified Trusts. An Investment Manager Agreement, effective as of such date, was executed by the Committee, M. D. Sass and the Commission. The trusts were initially funded on December 23, 1987.

Request for Order Approving Investment Manager Agreement with RCM.

The Qualified Trust provides that "[T]he Committee may appoint one or more Investment Managers to direct the investment of all or a part of the Master Trust." "Investment Managers" are defined as the fiduciaries who have been retained by the Committee to manage, acquire or dispose of trust assets.

The Qualified Trust contemplates the execution of an agreement with each Investment Manager selected to direct the investment of trust assets. It defines the Investment Manager Agreement as the "agreement(s) between the Committee and an investment manager selected by the Committee which agreement governs the management of the assets of the Master Trust and is confirmed by the CPUC." The Commission in D. 87-05-062 and Resolution (R.) E-3071 explicitly required its approval of all Investment Manager Agreements.

By resolution of August 21, 1989, the Committee, on a 5-0 vote, approved retaining RCM as an additional Investment Manager under the Qualified Trust and authorized the execution of an Investment Manager Agreement between such firm and the Committee. The Nonqualified Trust will continue to be managed solely by M. D. Sass.

In its meetings of November 2, 1988 and March 3, 1989, the Committee requested its staff to pre-screen investment management firms professing nuclear decommissioning trust expertise. Committee staff conducted extensive interviews with a total of ten organizations and evaluated each based upon the selection criteria discussed with the Committee. Three firms were invited to make presentations to the Committee. The Committee believed that based upon the selection criteria RCM best fulfilled the Committee's goals and objectives for an Investment Manager.

The Committee and RCM propose to execute an Investment Manager Agreement, upon approval of the Commission. This

proposed agreement is substantially the same as the Investment Manager Agreement with M. D. Sass, already approved by the Commission, except for Section 6 and Section 8. Section 6 provides for lower fees than are currently paid to M. D. Sass. Section 8 provides comparable or greater liability protection for the Qualified Trust than an agreement approved by the Commission between RCM and Southern California Edison.

The Committee intends that, after approval and execution of the Investment Manager Agreement, funding of RCM's investment account will commence, with the entire amount of subsequent monthly contributions to the Qualified Trust (currently \$ 5.2 million). The monthly contributions by PG&E to the Qualified Trust will continue to be allocated to RCM until the Committee decides otherwise. Consistent with the expressed desire of the Committee, an initial allocation to RCM will be made based on an aggregate of the monthly contributions to the Qualified Trust due in September, October, and November, 1989.

The Commission Advisory and Compliance Division (CACD) has an ongoing monitoring program and has met from time to time with the Committees, all three utilities which have nuclear decommissioning trust funds, the trustee and all of the investment managers, including RCM in its capacity as manager for Southern California Edison Company. CACD has also interviewed RCM following the Committee's resolution and it concurs in recommending approval of the appointment. CACD further concurs that the aggregation of the September, October, and November, 1989 contributions to start funding for RCM is reasonable.

#### Request for Ex Parte Relief

In the interests of time, administrative efficiency, and because there are no additional facts to be provided or issues to be decided, PG&E requests that the Commission act on this Application on an ex parte basis and without hearings. Ex parte treatment of this Application will have no adverse impact

on the public interest because, as the Commission has already determined, the Qualified Trust and Investment Manager Agreement:

...provide adequate requirements that the investment manager or advisor will be fairly evaluated on a reasonable and regular basis. This assures [the investment manager] an adequate opportunity to perform, yet still provides sufficient safeguards to preserve the assets of the trust funds and maximize the earnings on allowable investments.  
Commission R. E-3071, mimeo, p. 5, finding #3.

Findings of Fact

1. PG&E, a California corporation, operates as a public utility under the jurisdiction of this Commission.
2. In D. 87-05-062, the Commission required externally managed trust funds to finance the decommissioning of nuclear power plants.
3. D. 87-05-062 required PG&E to obtain the Commission's approval prior to executing the trust agreements for its Diablo Canyon Nuclear Generating Station and Humboldt Bay Nuclear Unit No. 3. In addition, PG&E was required to obtain approval of its selection for Investment Manager.
4. In R. E-3071, the Commission approved the appointment of M. D. Sass as the Investment Manager of the trust funds.
5. In this Application, PG&E has requested confirmation of RCM, a second Investment Manager appointed by the Committee.
6. In this Application, PG&E has also requested approval of the proposed Investment Manager Agreement between the Committee and RCM.
7. In support of this Application, PG&E has included the qualifications and credentials of RCM.

8. The Investment Manager Agreement for the Diablo Canyon Nuclear Generating Station and Humboldt Bay Nuclear Unit No. 3, is fair and reasonable.

9. The Investment Manager Agreement is in compliance with the requirements of D. 87-05-062 and R. E-3071.

10. In conforming to D. 87-05-062 and R. E-3071, the Investment Manager Agreement provides adequate requirements that RCM, as investment manager, will be fairly evaluated on a reasonable and a regular basis, while assuring the necessary latitude and safeguards.

11. The CACD concurs with the appointment of RCM.

12. There is no known opposition to this proceeding and no reason to delay granting the approval requested.

#### Conclusions of Law

1. The Application is made pursuant to Section 701 of the Public Utilities Code of the State of California, the Commission's Rules of Practice and Procedure, and prior decisions, orders and resolutions of the Commission and specifically D. 87-05-062 and R. E-3071.

2. A public hearing is not necessary.

3. The application should be granted to the extent set forth in the order that follows.

4. The following order should be effective on the date of signature, to enable PG&E to proceed with its plans in an expeditious manner.

ORDER

IT IS ORDERED that:

1. Pacific Gas & Electric Company is granted approval to execute its proposed Investment Manager Agreement between the Committee and RCM Capital Management; and

2. The Acting Executive Director is directed to sign such Investment Manager Agreement on behalf of the Commission.

This order is effective today.

Dated OCT 12 1989 at San Francisco,  
California.

G. MITCHELL WILK  
President  
FREDERICK R. DUDA  
STANLEY W. HULETT  
JOHN B. OHANIAN  
PATRICIA M. ECKERT  
Commissioners

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

*Wesley Franklin*

WESLEY FRANKLIN, Acting Executive Director

Decision 89 10 029

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