

Decision 90-08-067 August 29, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 PACIFIC GAS AND ELECTRIC COMPANY )  
 (U 39 M) Requesting Approval of )  
 the Appointment of Mellon Bank, N.A., )  
 as Trustee )  
 )  
 (Electric and Gas) (U-39-M) )

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Application 90-07-027  
(Filed July 16, 1990)

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 appointment of Mellon Bank, N.A. ("Mellon"), as a substitute trustee of PG&E's decommissioning trusts, and to execute restated trust agreements with such substitute trustee.

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 (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, Harris Trust and Savings Bank (Harris) has been the trustee. By this application, PG&E is requesting the approval of a substitute trustee, and the execution of a restated trust agreement therewith.

Background

In Order Instituting Investigation No. 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.

Article 4.01 of the qualified and nonqualified trust agreements provide that the Committee shall have the right to remove the acting trustee and appoint another entity as a successor trustee. Article 2.10 of the qualified trust agreement and Article 2.12 of the nonqualified trust agreement provide that the Committee may amend the trust agreements by filing a copy of the amendment with the Commission. D.87-05-062 and Resolution (Res.) E-3048 expressly require Commission approval of all subsequent proposed trust agreements.

Request for Order Approving Substitute Trustee and Associated Restated Trust Agreement

As set forth above, the qualified and nonqualified trust agreements allow the Committee to replace the trustee and appoint a substitute trustee. In turn, the Commission has effectively required its approval of this action, which requires revision of the trust documents.

By resolution of June 27, 1990 (Exhibit A to Application (A.) 90-07-027), the Committee on a 4-0 vote approved replacing Harris Trust and Savings Bank ("Harris"), and in its place, appointing Mellon as trustee.

The Committee's process in deciding to replace Harris and appoint Mellon as trustee was complete and comprehensive. The Committee staff's rationale for appointing Mellon -- as presented to the Committee -- was submitted to the Commission (Exhibit B to A.90-07-027). Among other factors, Committee staff's recommendation was supported by considerations of accuracy, timeliness and assurance of compliance with Internal Revenue Code restrictions as well as performance measurement and tax reporting capabilities. In addition, the Committee's staff concluded that Mellon's fee were competitive with Harris' fee structure.

Based on the Committee's resolution adopting its staff's recommendation, PG&E proposes to execute, upon approval of the Commission, restated trust agreements with Mellon (Exhibits C and D to A.90-07-027) with essentially identical terms as the existing agreements, except for a revised fee schedule (p.30, Qualified Trust, p.28, Nonqualified Trust). The remaining changes from the present trust agreements are technical and conforming in nature.

The Committee intends that, after the CPUC issues its order, the resignation of Harris as Trustee and the substitution of Mellon will proceed, as soon as is reasonably practicable.

The Commission Advisory and Compliance Division (CACD) has an ongoing monitoring program and has met from time to time with the committees of all three utilities which have nuclear decommissioning trust funds, the original trustee for all

California decommissioning trusts, Harris, and all of the trusts' investment managers. CACD has also interviewed Mellon following the Committee's resolution and it concurs in recommending approval of the appointment.

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. The rationale for affirming ex parte treatment here is the same as the Commission used in approving the appointment of new investment managers on an ex parte basis: namely, there are adequate procedures in place to monitor the entity's performance (in this case, Mellon) on a reasonable and regular basis (see, for example, Decision 89-10-029, p.5, mimeo). In this regard, Article 3.05 of the trusts expressly requires the Committee to provide annual reports as to whether the trustee should be replaced as well as a tri-annual report evaluating on a competitive basis other firms which can provide the trustee function.

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.
4. In Res. E-3048, the Commission required its approval of all subsequent trust agreements.
5. In this application, PG&E has requested an approval of Mellon, as replacement trustee.

6. In this application, PG&E has also requested approval of the proposed restated trust agreement between itself and Mellon.

7. In support of this application, PG&E has included considerations supporting the substitution of Mellon as trustee.

8. The restated trust agreements for the Diablo Canyon Nuclear Generating Station and Humboldt Bay Nuclear Unit No.3, are fair and reasonable.

9. The restated trust agreements are within the requirements of D.87-05-062 and Res. E-3048.

10. In conforming to D.87-05-062 and Res. E-3048, the trust agreements provide adequate requirements that Mellon, as trustee, 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 Mellon.

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 Res. E-3048.

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.

O R D E R

## IT IS ORDERED that:

1. The replacement of the present trustee, Harris Trust and Saving Bank, with Mellon Bank, N.A. is approved.
2. Pacific Gas and Electric Company is granted approval to execute its proposed restated trust agreements with Mellon Bank, N.A.
3. The Executive Director is directed to sign such trust agreements on behalf of the Commission.

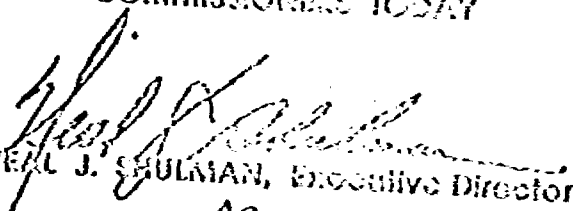
This order is effective today.

Dated August 29, 1990 at San Francisco, California.

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

Commissioner John B. Ohanian,  
being necessarily absent, did  
not participate.

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

  
NEAL J. SCHULMAN, Executive Director  
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