

Decision 90 12 039 DEC 06 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
PACIFIC GAS & ELECTRIC COMPANY )  
(U 39 M) Requesting Approval of a )  
Proposed Investment Manager )  
Agreement with Bankers Trust )  
(Electric and GAS) (U-39-M) )

**ORIGINAL**  
Application 90-10-044  
(Filed October 17, 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 proposed Investment Management Agreement with Bankers Trust Company (Bankers Trust) and to authorize the Executive Director to sign such Agreement on behalf of the Commission.

Notice of the filing appeared on the Commission's Daily Calendar of October 26, 1990. No protests have been received.

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. M. D. Sass Investors Services, Inc. (Sass) was appointed as the first Investment Manager directing the investment of PG&E's trust fund assets. Subsequently, RCM Capital Management (RCM) was appointed as an additional Investment Manager. By this application, PG&E is requesting the approval of an agreement with a new Investment Manager -- Bankers Trust Company -- to manage

eligible trust fund assets in a manner designed to approximate the return of the Standard & Poors (S&P) 500 index.

Background

In Order Instituting Investigation 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 Sass to direct the investment of the Qualified and Nonqualified Trusts. An Investment Manager Agreement, effective

on that date, was executed by the Committee, Sass and the Commission. The trusts were initially funded on December 23, 1987.

On October 12, 1989, the Commission approved the appointment of a second investment manager for the Qualified Trust -- RCM. An investment manager agreement was executed shortly thereafter by the Committee, RCM and the Commission.

Request for Order Approving Investment Manager Agreement with Bankers Trust

The Nonqualified Trust provides that "The 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 Nonqualified 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 (Commission)." The Commission in D.87-05-062 and Resolution (R.) E-3071 explicitly required its approval of all Investment Manager Agreements.

By resolution of September 21, 1990 (attached as Exhibit B to the application), the Committee, on a 5-9 vote, approved retaining Bankers Trust as an additional Investment Manager under the Nonqualified Trust and authorized the execution of an Investment Manager Agreement between such firm and the Committee. Under the proposal adopted by the Committee, the equity portion of the Nonqualified Trust would be removed from the Sass investment account and would be placed in the Bankers Trust account. The Committee approved the Bankers Trust appointment

for the specific purpose of managing the equity portion of the Nonqualified Trust as an account approximating the return of the S&P 500 Index.

The Committee's staff (Staff) provided the Committee with several reasons for investing the equity portion of the Nonqualified Trust in a manner intended to approximate the S&P 500 index. First, Staff discussed the favorable performance history of the proposed index. Second, Staff stated that investing to approximate an index would reduce certain manager-specific risks. Finally, Staff noted that investing in the manner proposed would help assure a long-term return approximately equal to the equity market represented by the index.

Staff also reviewed the Committee's recommendation to engage Bankers Trust, including a review of Bankers Trust's qualifications, expertise in index fund management, fees (which were generally lower than fees charged by Sass), and tax management services. Bankers Trust was identified by Staff as one of the largest index fund managers in the world, managing approximately \$37 billion in equity funds, including \$200 million in S&P 500 index accounts for taxable entities. In this regard, Staff noted that Bankers Trust will be managing the account using a tax management strategy, consistent with approximating the return of the S&P 500 Index. This tax management expertise was either not offered by other competing index fund managers, or was offered only at a significantly higher management fee.

The Committee and Bankers Trust proposes to execute an Investment Manager Agreement, upon approval of the Commission. The proposed agreement, attached as Exhibit A to the application, is similar to the nonqualified investment manager agreement with Sass, already approved by the Commission, except for Section 6, addressing fees, and certain other modifications, designed to conform the agreement to its investment purpose (i.e., to establish an account approximating the S&P 500 Index). Section 6 of the proposed agreement, addressing fees, generally provides

for lower fees (20 basis points with a \$40,000 annual minimum) than are currently paid to Sass (25 basis points on a marginal cost basis).

The Committee intends that, after approval and execution of the Investment Manager Agreement, funding of the Bankers Trust investment account will commence, with the entire amount of the equity portion of the Nonqualified Trust. Under Commission guidelines the equity portion of the Nonqualified Trust is not to exceed 60% of the Nonqualified Trust. D.87-05-062, Conclusion of Law #6, p.37. Pursuant to these Commission guidelines, the Committee resolution provides for a target allocation of the Nonqualified Trust of 55% equities and 45% in fixed-income investments. The portfolio would be rebalanced to the 55% target allocation if, at the end of any calendar quarter, market movement had driven the asset allocation more than five percentage points from this target (e.g., above 60% or below 50%). 1/

The Commission Advisory and Compliance Division (CACD) has an ongoing monitoring program and has met from time to time with the Committees and all three utilities which have nuclear decommissioning trust funds. CACD has reviewed the rationale underlying the Committee's resolution approving the appointment of Bankers Trust and concurs in the Committee's appointment. CACD further concurs that the approach for allocating the equity share of the Nonqualified Trust to Bankers Trust is reasonable.

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1/ It should be noted that under this approach it would be possible to temporarily exceed the 60% equity limitation. PG&E believes, however, such a temporary condition does not conflict with the Commission guideline, given the intention to rebalance on a quarterly basis.

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 Nonqualified Trust and Investment Manager Agreement will:

" . . . 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 an Investment Manager Agreement with M. D. Sass, engaging them as the first Investment Manager of the trust funds.

5. In D.89-10-029, the Commission approved an Investment Manager Agreement with RCM Capital Management, engaging them as an additional Investment Manager for the Qualified Trust.

6. In this Application, PG&E has requested approval of the proposal Investment Manager Agreement between the Committee and Bankers Trust.

7. In support of this Application, PG&E has set forth the rationale for retaining Bankers Trust.

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

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

10. The Committee proposes to allocate the equity portion of the Nonqualified Trust to the Bankers Trust investment account based on a targeted percentage of 55% of the Nonqualified Trust asset. The portfolio would be rebalanced to the 55% target allocation if, at the end of the calendar quarter, market movement has driven the asset allocation more than five percentage points from this target.

11. The CACD concurs with the appointment of Bankers Trust.

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

#### Conclusion 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.
5. The proposed Nonqualified Investment Manager Agreement for the Diablo Canyon Nuclear Generating Station and Humboldt Bay Nuclear unit 3, is fair and reasonable.
6. The proposed method of allocating the equity portion of the Nonqualified Trust to the proposed Bankers Trust investment account is reasonable.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company is granted approval to execute its proposed Investment Manager Agreement between the Committee and Bankers Trust Company.

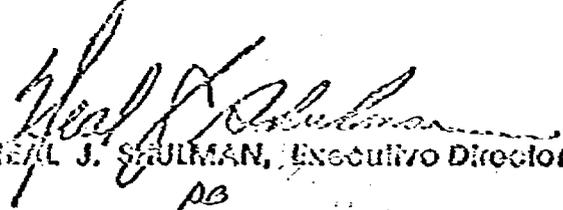
2. The Executive Director is directed to sign such Investment Manager Agreement on behalf of the Commission.

This order is effective today.

Dated DEC 06 1990 at San Francisco, California.

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

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

  
NEIL J. STULMAN, Executive Director  
PB

**CHECKLIST:**

- 1) APPLICATION FILED \_\_\_\_\_
- 2) APPLICATION RECEIVED \_\_\_\_\_
- 3) MEMO TO E/W/T BRANCH SENT \_\_\_\_\_
- 4) REPLY FROM E/W/T BRANCH RECEIVED \_\_\_\_\_
- 5) D.R. SENT TO CO. \_\_\_\_\_
- 6) REPLY RECEIVED FROM CO. \_\_\_\_\_
- 7) COMMISSION MEETING DATE \_\_\_\_\_
- 8) AGENDA REVIEW MEETING DATE \_\_\_\_\_
- 9) PROCESS SUBMISS. DEADLINE \_\_\_\_\_