

Decision 90-12-094 December 19, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND
ELECTRIC COMPANY to issue, sell and
deliver one or more series of its
First and Refunding Mortgage Bonds,
debentures, promissory notes and/or
other evidences of indebtedness
in connection with domestic or
Euromarket offerings and to
guarantee the obligations of others
in respect of the issuance of
securities, the total aggregate
principal amount of such issuances
and guarantees not to exceed
\$1,000,000,000; to issue shares of
its Common Stock upon conversion of
convertible debt securities or the
exercise of equity warrants; to
enter into one or more interest
rate swap agreements; and for an
exemption from the Competitive
Bidding Rule. (U39M)

ORIGINAL

Application 88-02-007
(Petitions for Modification
filed October 1, 1990 &
October 9, 1990)

S U P P L E M E N T A L O P I N I O N

Summary of Decision

This decision grants in part and denies in part Pacific Gas and Electric Company (PG&E) the authority requested in its Petitions for Modification.

Notice of the filing of the Petitions for Modification appeared on the Commission's Daily Calendars of October 15, 1990 and October 18, 1990. No protests have been received.

By Decision (D.) 88-04-063, dated April 27, 1988, as modified by D.89-12-043, dated December 18, 1989, in Application (A.) 88-02-007, the California Public Utilities Commission (Commission) authorized PG&E (among other things) to issue and sell before December 31, 1990, not exceeding \$1,000,000,000 aggregate principal amount of Debt Securities; to enter into one or more interest rate swap agreements subject to certain restrictions; and to exempt certain Debt Securities from the Competitive Bidding Rule (Rule).

PG&E requests that the Commission 1) extend the expiration date of D.88-04-063, 2) modify the interest rate swap authorization, and 3) modify three issues relating to the exemption from the Rule granted by D.88-04-063, as set forth below.

Modifications Sought

A. Extension of Expiration Date

PG&E states that an aggregate principal amount of \$119,650,000 of the Debt Securities authorized by D.88-04-063 have been issued. PG&E also states that it currently forecasts utilizing the remaining authorization during the period ending December 31, 1992. For this reason, PG&E requests to extend the authorization to issue the remaining \$880,350,000 aggregate principal amount of Debt Securities until December 31, 1992.

The Commission Advisory and Compliance Division (CACD) recommends, and we concur, that the time during which PG&E may issue the securities authorized by D.88-04-063 should be extended to December 31, 1992. CACD believes, and we concur, that this period is an adequate time to assess and evaluate conditions of the market for which the securities would be issued.

B. Exemption From the Competitive Bidding Rule

PG&E states that in A.88-02-007 it requested exemption from the Rule for debt issues of \$300,000,000 principal amount or larger and that on page 27, D.88-04-063 states that CACD notes consistency with recent decisions and thus concurs with this exemption. However, on page 36 of D.88-04-063 in the Commission's Order, Item 1.b. omitted the exemption from the Rule for debt issues of \$300,000,000 or larger. For this reason, PG&E requests that Item 1.b. of the Order be modified to include this exemption.

CACD recommends, and we concur, that Item 1.b. should be modified to include an exemption for debt issues of \$300,000,000 or more.

In A.88-02-007, PG&E also requested authority to eliminate the one-day notice requirement contained in the Rule; however, D.88-04-063 neglected to state whether this requirement can be eliminated. For this reason, PG&E now requests that Item 1.b. of the Order be modified to eliminate this requirement.

CACD has reviewed PG&E's request and believes that PG&E has made a compelling showing that the one-day notice requirement should be eliminated. CACD recommends, and we concur, that Item 1.b. of the Order should be modified to eliminate this requirement.

In A.88-02-007, PG&E requested exemption from competitive bidding for both interest rate swap agreements and for Debt Securities issued in conjunction with interest rate swap agreements. On page 29 of D.88-04-063, the CACD concurred with PG&E's request for exemption from the Rule for interest rate swap agreements, but neglected to mention Debt Securities issued in conjunction with interest rate swaps. On page 36 of D.88-04-063 in the Commission's Order, Item 1.b. exempted Debt Securities issued in connection with interest rate swaps but did not exempt interest rate swap agreements. For these reasons, PG&E requests that 1) page 29 of D.88-04-063 be modified to include CACD's concurrence that Debt Securities issued in conjunction with interest rate swaps can be exempted from the Rule, and 2) Item 1.b. of the Order be modified to include an exemption for interest rate swap agreements in addition to the exemption for Debt Securities issued in connection with interest rate swaps.

CACD believes that PG&E has made a compelling showing that interest rate swap agreements and Debt Securities issued in conjunction with interest rate swaps should be exempted from the Rule. CACD recommends, and we concur, that PG&E's recommendations for modification of page 29 of D.88-04-063 and Item 1.b. should be adopted.

C. Interest Rate Swap Restrictions & Limitations

PG&E requests that the Commission modify the interest rate swap authorization granted by D.88-04-063 to be consistent with the interest rate swap authorizations granted to Southern California Edison in D.90-04-029, dated April 11, 1990, and Southern California Gas Company in D.90-07-024, dated July 6, 1990. For this reason, PG&E requests that the restrictions and limitations placed on PG&E by D.88-04-063 in relation to interest rate swaps be modified in their entirety as follows:

1. Reports

- a. Within 15 days of entering into an interest rate swap, PG&E shall furnish to the CACD a report analyzing the interest rate swap including all costs associated with the interest rate swap in comparison to a projection of "all-in cost" without an interest rate swap.
- b. Within 45 days of entering into an interest rate swap, PG&E shall provide the CACD with a complete copy of the executed agreement and all associated documentation.
- c. PG&E shall separately report all interest income and/or expenses arising from all interest rate swaps in all monthly and annual financial reports to the Commission.

2. Limit on Rate Recovery

- a. If PG&E elects to terminate the interest rate swaps before the original maturity or the interest rate swap partner terminates the interest rate swap, all costs associated with the termination shall be subject to review in PG&E's next Cost of Capital proceeding.

3. Limit on Amount of Interest Rate Swaps

- a. Interest rate swap agreements shall not exceed at any time 40% of PG&E's total long-term debt outstanding.

CACD believes that PG&E has made a compelling showing that D.88-04-063 should be modified to reflect consistency with prior Commission decisions for Southern California Edison (D.90-04-029) and Southern California Gas Company (D.90-07-024) in relation to reporting requirements and the limit on rate recovery for interest rate swap agreements. CACD recommends, and we concur, that PG&E's request for modification of D.88-04-063 with relation to reporting requirements and limits on rate recovery should be adopted.

CACD does not agree, however, with PG&E's assertion that interest rate swap agreements should not exceed, at any time, 40% of PG&E's total long-term debt outstanding. The Division of Ratepayer Advocates (DRA) expressed its concerns that the 40% figure was not a prudent amount because of the unknown nature of such transactions. CACD believes that at this time a more prudent and manageable amount should be approximately 20% of PG&E's total long-term debt outstanding.

PG&E, CACD and DRA met, and the parties agreed that, with regard to Item 3.a., interest rate swap agreements shall not exceed 20% of PG&E's total long-term debt outstanding (including Diablo Canyon) at any time. CACD recommends, and we concur, that interest rate swap agreements shall not exceed 20% of PG&E's total long-term debt outstanding (including Diablo Canyon) at any time.

D. Interest Rate Swap Authorization

PG&E requests that the Commission modify D.88-04-063 so that an interest rate swap would not be treated as additional debt for purposes of calculating the amount of authorization used. For example, if PG&E issues \$50 million of fixed-rate debt and enters into an interest rate swap in conjunction with that

debt to swap it into \$50 million of floating-rate debt, only \$50 million of Commission authorization is used because PG&E's total indebtedness resulting from the fixed-rate issue and the interest rate swap is \$50 million.

CACD believes that PG&E has made a compelling argument for the fact that an interest rate swap should not be treated as additional debt for purposes of calculating the amount of authorization used. CACD recommends, and we concur, that D.88-04-063 should be modified to clarify this area.

Findings of Fact

1. The proposed extension of time to December 31, 1992, during which PG&E may issue the securities authorized by D.88-04-063 would be for proper purposes and would not be adverse to the public interest.

2. The proposed modification to D.88-04-063 that an interest rate swap should not be treated as additional debt for purposes of calculating the amount of authorization used would not be adverse to the public interest.

3. The proposed modification to D.88-04-063 that Item 1.b. should be modified to include an exemption for debt issues of \$300,000,000 would not be adverse to the public interest.

4. The proposed modification to D.88-04-063 that Item 1.b. should be modified to eliminate the one-day notice requirement for interest rate swap agreements would not be adverse to the public interest.

5. The proposed modification to D.88-04-063 that interest rate swap agreements and Debt Securities issued in conjunction with interest rate swaps should be exempted from the Rule would not be adverse to the public interest.

6. The proposed modification to D.88-04-063 that limits placed on interest rate swap agreements with respect to reporting requirements and limits on rate recovery are consistent with prior Commission decisions would not be adverse to the public interest.

7. The proposed modification to D.88-04-063 that the limit on interest rate swap agreements with respect to the amount of swap agreements should not exceed 20% of PG&E's total long-term debt outstanding (including that of Diablo Canyon) would not be adverse to the public interest.

8. There is no known opposition to the proceeding and there is no reason to delay granting the authority requested.

Conclusions of Law

1. A public hearing is not necessary.

2. The Petitions for Modification should be granted to the extent set forth in the supplemental order that follows.

The following supplemental order should be effective on the date of signature.

S U P P L E M E N T A L O R D E R

IT IS ORDERED that:

1. The authority granted to Pacific Gas and Electric Company by D.88-04-063 (D.) 88-04-063 dated April 27, 1988, as modified by D.89-12-043, dated December 18, 1989, in Application (A.) 88-02-007, is modified to extend the period of time of authorization to December 31, 1992.

2. D.88-04-063 is modified with respect that interest rate swaps shall not be considered as additional debt for purposes of calculating the amount of authorization used.

3. D.88-04-063 is modified with respect to Item 1.b. that debt issues of \$300,000,000 principal amount or larger shall be exempt from the Commission's Competitive Bidding Rule (Rule).

4. D.88-04-063 is modified with respect to Item 1.b. that for Debt Securities sold under the Rule, the one-day notice requirement shall be eliminated.

5. D.88-04-063 is modified with respect to page 29 that Debt Securities issued in conjunction with interest rate swaps shall be exempted from the Rule.

6. D.88-04-063 is modified with respect to Item 1.b. that interest rate agreements shall be exempt from the Rule.

7. D.88-04-063 is modified with respect to reports on interest rate swap transactions and the limit on rate recovery of interest rate swaps as set forth in this decision.

8. D.88-04-063 is modified with respect to the limit on the amount of interest rate swaps that such swaps shall not exceed at any time 20% of PG&E's total long-term debt outstanding (including Diablo Canyon).

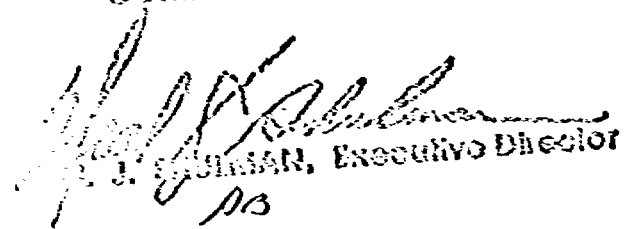
In all other respects D.88-04-063, as modified by D.89-12-043, remains in full force and effect.

This supplemental order is effective today.

Dated December 19, 1990, 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


J. J. BUCHANAN, Executive Director
JB