

Decision 91 01 030 JAN 25 1991

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)
Proposed Investment Manager)
Agreements with RCM Capital)
Management, National Investment)
Service of America, Inc., and)
Sanford C. Bernstein & Co., Inc.)

ORIGINAL

Application 90-12-025
(Filed December 13, 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's Application 90-12-025 (Application) requests the California Public Utilities Commission (Commission) to approve the proposed Investment Manager Agreements (Agreements) with RCM Capital Management (RCM), National Investment Services of America, Inc. (NISA), and Sanford C. Bernstein & Co., Inc. (Bernstein), and to authorize the Executive Director to sign such Agreements on behalf of the Commission.

Notice of the filing appeared on the Commission's Daily Calendar of December 17, 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. Since the

inception of the PG&E trusts, several Investment Managers have been retained to direct the investment of its trust fund assets. By this Application, PG&E is requesting approval of Agreements with two new Investment Managers, NISA and Bernstein. PG&E is also requesting approval of an additional Agreement with RCM, an existing trust fund manager.

Background

In Order Instituting Investigation (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. A Qualified Trust Agreement was designed as the vehicle to hold the decommissioning funds which qualify for an income tax deduction under Section 468A of the Internal Revenue Code and a Nonqualified Trust Agreement was designed to hold the remaining funds. PG&E's Trust Agreements were approved by the Commission on November 25, 1987, and were executed shortly thereafter.

Both trusts provide for the establishment of the Nuclear Facilities Decommissioning Master Trust Committee (Committee) consisting of five members, at least three of which cannot be employees, officers, directors, or agents of PG&E. 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 an initial Investment Manager (M. D. Sass Investors Services, Inc.) to direct the investment of the Qualified and Nonqualified Trusts. An Investment Manager Agreement, effective as of such date, was executed by the Committee. The trusts were initially funded on December 23, 1987. Subsequent Investment Manager Agreements were approved on October 12, 1989 (RCM with respect to the Qualified Trust) and December 6, 1990 (Bankers Trust Company with respect to the Nonqualified Trust).

Request for Order Approving Investment Manager Agreements

The Qualified and Nonqualified Trusts provide 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 Qualified and Nonqualified Trusts contemplate the execution of an Agreement with each Investment Manager selected to direct the investment of trust assets. They define 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 (Res.) E-3071 explicitly required its approval of all Investment Manager Agreements.

By resolution of December 12, 1990, the Committee on a 5-0 vote: (1) approved retaining RCM as Investment Manager under the Nonqualified Trust (RCM is currently acting as Investment

Manager under the Qualified Trust), (2) approved retaining NISA and Bernstein as Investment Managers under both the Qualified and Nonqualified Trusts; and (3) authorized the execution of Investment Manager Agreements between such firms and the Committee.

In its meeting of October 5, 1990, the Committee requested its staff to pre-screen investment management firms professing nuclear decommissioning trust expertise for the purpose of selecting two new Investment Managers. Committee staff conducted extensive interviews with a total of eight 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, NISA and Bernstein best fulfilled the Committee's goals and objectives for an Investment Manager.

The Committee also approved expanding RCM's role to include investment management responsibilities over the non-equity portion of the Nonqualified Trust. The Commission had previously approved a Qualified Investment Manager Agreement between the Committee and RCM (D.89-10-029, dated October 12, 1989).

The Committee proposes to execute Investment Manager Agreements with RCM, NISA, and Bernstein (attached to the Application as Exhibits A, B, and C, respectively), upon approval of the Commission. Although none of the Investment Manager Agreements are identical, they all include provisions and terms common to Agreements already approved by the Commission.

Section 6 of each Agreement, addressing fees, provides for fees comparable or less than fee scheduling previously approved by the Commission in the RCM Qualified Investment Manager Agreement. Section 8 of the Qualified Agreements, addressing manager liability, provides for comparable or greater protection for the Qualified Trust than the RCM Qualified Investment Manager

Agreement, already approved by the Commission. In the case of the Nonqualified Agreements, comparable liability protection to other Nonqualified Agreements approved by the Commission is obtained.

The Committee intends that, after approval and execution of the Agreements, (1) RCM's non-qualified investment account will be funded with the entire amount of the non-equity portion of the Nonqualified Trust, as well as all subsequent monthly contributions allocable to non-equity investments; and (2) the NISA and Bernstein investment accounts will be funded with amounts currently being managed by Mellon Bank, N.A., an amount which will result in approximately equivalent funds for each of the three Qualified Trust Managers. The Committee's intention is that subsequent monthly contributions by PG&E to the Qualified Trust will be allocated evenly among the three managers. No Nonqualified Trust funding of the investment accounts of either NISA or Bernstein is anticipated; however, approval of Nonqualified Agreements with each firm is requested, so that the Committee will have sufficient latitude to utilize each firm's expertise promptly should future circumstances warrant.

The Commission Advisory and Compliance Division (CACD) has an ongoing monitoring program and has met from time to time with the Committee, the Trustee and the Investment Managers. CACD had previously interviewed RCM and it concurs in recommending approval of the appointment of RCM as Investment Manager of the Nonqualified Trust. CACD attended the Committee meeting of December 12, 1990, approving the retention of NISA and Bernstein, and CACD also concurs in these appointments.

Request for Ex Parte Relief

In the interest 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 trusts and Investment Manager Agreements 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 Res. 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 Investment Manager Agreements.
4. In D.89-10-029, the Commission approved an Investment Manager Agreement with RCM, engaging them as an additional Investment Manager for the Qualified Trust.
5. In this Application, PG&E requests approval of a proposed Investment Manager Agreement between the Committee and RCM for the Nonqualified Trust.
6. In this Application, PG&E also requests approval of proposed Investment Manager Agreements with NISA and Bernstein for both the Qualified Trust and Nonqualified Trust.
7. In support of this Application, PG&E has submitted profiles of NISA and Bernstein.

8. The proposed Investment Manager Agreements are in compliance with the requirements of D.87-05-062 and Res. E-3071.

9. In conforming to D.87-05-062 and Res. E-3071, the proposed Investment Manager Agreements provide adequate requirements that RCM, NISA, and Bernstein, as Investment Managers, will be fairly evaluated on a reasonable and a regular basis, while assuring the necessary latitude and safeguards.

10. CACD concurs with the appointment of RCM, NISA, and Bernstein.

11. 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-3071.

2. A public hearing is not necessary.

3. PG&E's 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. Pacific Gas and Electric Company is granted approval to execute its proposed Investment Manager Agreements between the Nuclear Facilities Decommissioning Master Trust Committee and RCM Capital Management, National Investment Services of America, Inc., and Sanford C. Bernstein & Co., Inc.

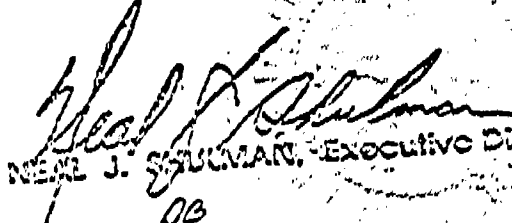
2. The Executive Director is directed to sign such Investment Manager Agreements on behalf of the Commission.

This order is effective today.

Dated January 25, 1991 at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

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


NEAL J. SCHULMAN, Executive Director
PB