

Decision 91-12-021 December 4, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the 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 issuances 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 caps, collars and)
swaps; and for an exemption from the)
Commission's Competitive Bidding)
Rule. (U 39-M))

ORIGINAL

Application 91-08-058
(Filed August 30, 1991)

OPINION

Summary of Decision

This decision grants in part and denies in part the authority Pacific Gas and Electric Company (PG&E) requested in Application 91-08-058 (Application).

PG&E requests authority, under Public Utilities (PU) Code Sections 701, 816 through 830, and 851, for the following:

1. a. To issue, sell and deliver, in one or more series, PG&E's First and Refunding Mortgage Bonds (Bonds), debentures, convertible debentures, debentures with warrants, promissory notes and/or other evidences of indebtedness and to enter into direct loans from banks, insurance companies or other financial institutions (to be collectively referred to as Debt Securities); and/or

- b. To unconditionally guarantee or otherwise secure the obligations issued by, or on behalf of, the State of California or any political subdivision, including but not limited to the California Pollution Control Financing Authority (to be collectively referred to as the Authorities or individually as the Authority), the proceeds of which are to be used to finance or refinance air and water pollution control facilities, sewage systems, solid waste disposal facilities, any other facilities qualifying for tax-exempt financing under the Internal Revenue Code or any combination thereof (to be collectively referred to as the Qualified Facilities).

The total aggregate principal amount of these issues and/or guarantees shall not exceed the aggregate principal amount of \$1,000,000,000;

- 2. To enter into one or more interest rate cap, collar or swap agreements from time to time without the necessity for prior consent from the Commission, and for exemption from the Commission's Competitive Bidding Rule for interest rate cap, collar and swap agreements and Debt Securities issued in connection with interest rate cap, collar or swap agreements;
- 3. To issue, sell and deliver the proposed issue or issues of Debt Securities pursuant to the Commission's Competitive Bidding Rule with the following modifications:
 - a. Exemption from the Competitive Bidding Rule for debt issues of \$300,000,000 principal amount or greater;
 - b. Exemption from the Competitive Bidding Rule for the issuance of its Medium-Term Notes on a continuous or periodic basis through dealers on a best-efforts or agency basis;
 - c. Exemption from the Competitive Bidding Rule for private placements with, or loans from, banks, insurance companies or other financial institutions, and for the issuance of Authority Bonds as described herein;
 - d. Elimination of the one-day notification requirement specified in the Competitive Bidding Rule; and

- e. Modification of the Competitive Bidding Rule to permit the use of such bidding procedures as are described herein;
- 4. To issue shares of PG&E's common stock:
 - a. In exchange for and upon retirement of the Debt Securities in each proposed series of convertible securities and upon conversion of these Debt Securities; or
 - b. In exchange for equity warrants upon exercise of these warrants, as may be required from time to time for any purpose under the provisions set forth, or to be set forth, in the certificates evidencing the Debt Securities and/or indentures and other documents relating thereto under which the Debt Securities will be issued;
- 5. To be relieved of the necessity of complying with the Commission's General Order Series 24 for the issuance of Medium-Term Notes;
- 6. To use the net proceeds (exclusive of accrued interest) to be derived through the proposed sale of Debt Securities for the purposes set forth in the Application; and
- 7. To use any accrued interest received in connection with the issue or issues of Debt Securities for general corporate purposes.

Notice of the filing of the Application appeared on the Commission's Daily Calendar of September 5, 1991. No protests have been received.

Partial Denial of Application

PG&E's proposal in the Application to use the funds for the reorganization or readjustment of its indebtedness or capitalization upon merger, consolidation or other reorganization is denied. The Commission Advisory and Compliance Division (CACD) recommends that authority for such use not be granted because PG&E did not comply with Rule 33(c) of the Commission's Rules of Practice and Procedure when filing its Application. The Commission

has considered CACD's recommendation and, finding it reasonable, will adopt it as stated above.

Background

PG&E, a California corporation, operates as a public utility subject to the jurisdiction of this Commission. PG&E generates, purchases, transmits and sells electricity, and purchases, transports, distributes and sells natural gas to 47 counties in Central and Northern California. The company also provides a small amount of incidental water and steam services.

For the twelve months ended March 31, 1991, PG&E reported that it generated total utility operating revenues of \$9,318,934,000 and net utility operating income of \$1,658,694,000, as indicated in its income statement shown as part of Exhibit A attached to the Application.

Also shown as part of Exhibit A is PG&E's balance sheet as of March 31, 1991, summarized as follows:

<u>Assets</u>	<u>Amount</u>
Net Utility Plant	\$16,992,310,000
Gas Stored Underground - Noncurrent	44,041,000
Other Property and Investments	920,382,000
Current and Accrued Assets	2,587,994,000
Deferred Debits	<u>1,150,053,000</u>
Total	\$21,694,780,000
<u>Liabilities and Equity</u>	
Common Equity	\$ 7,387,829,000
Preferred Stock	1,109,647,000
Long-Term Debt	7,734,269,000
Other Non-Current Liabilities	274,137,000
Current and Accrued Liabilities	2,243,559,000
Deferred Credits	<u>2,945,339,000</u>
Total	\$21,694,780,000

As of March 31, 1991, PG&E's construction expenditures unreimbursed from the sale of securities amounted to \$11,103,418,000, as shown in Exhibit B attached to the Application.

Construction Budgets

PG&E's construction budgets for the years 1991, 1992 and 1993 amount to approximately \$4,940,000,000 as of December 31, 1990. Major classifications of the total budgeted construction are summarized as follows:

<u>Component</u>	<u>1991</u>	<u>1992</u> (In Thousands)	<u>1993</u>
Electric Department	\$1,220,000	\$1,167,000	\$1,208,000
Gas Department	<u>436,000</u>	<u>429,000</u>	<u>480,000</u>
Total	\$1,656,000	\$1,596,000	\$1,688,000

CACD has reviewed PG&E's construction budgets for the years 1991, 1992 and 1993, and has concluded that PG&E's proposed sale of securities, as requested in the Application, is necessary to partially reimburse PG&E's treasury for capital additions and improvements to its utility plant or to fund the planned construction. However, PG&E is placed on notice, by this decision, that the Commission does not find that PG&E's construction program is necessary, or reasonable, for ratemaking purposes. These are issues normally tested in general rate or rate base offset proceedings.

Cash Requirements Forecasts

As included in supplemental data provided to CACD, PG&E's cash requirements forecasts for years 1991 and 1992, estimated as of June 1991, are summarized as follows:

	<u>1991</u>	<u>1992</u>
Funds Used or Required for Construction Expenditures (Excluding AFUDC)	\$1,570,100,000	\$1,672,300,000
Maturities and Redemption of Long-Term Debt, Including Sinking Fund Requirements and Preferred Stock	351,126,000	184,020,000
Short-Term Debt Outstanding as of Beginning of Year	<u>639,000,000</u>	<u>611,000,000</u>
Subtotal	\$2,560,226,000	\$2,467,320,000
Less: Estimated Cash from Internal Sources	<u>2,075,226,000</u>	<u>1,558,320,000</u>
Additional Funds Required from Outside Sources	\$ 485,000,000	\$ 909,000,000

CACD has analyzed PG&E's cash requirements forecasts shown above and has concluded that internally generated funds will provide approximately 81% of the 1991 cash requirements, or \$2,075,226,000, and approximately 63% of the 1992 cash requirements, or \$1,558,320,000.

CACD concludes that PG&E's proposed sale of securities, as requested in the Application, is reasonable and that authority should be granted. The Commission has considered CACD's recommendations and finding them reasonable, will adopt them as stated above.

Capital Ratios

PG&E's capital ratios, as of March 31, 1991, reported in its Application and in supplementary data provided to CACD, are shown below, as recorded and as adjusted to give pro forma effect to the transactions that follow:

	<u>March 31, 1991</u>	<u>Pro Forma</u>
Long-Term Debt	46.5%	46.8%
Short-Term Debt	<u>2.3</u>	<u>8.5</u>
Total Debt	48.8%	55.3%
Preferred Stock	6.6	5.8
Common Equity	<u>44.6</u>	<u>38.9</u>
Total	100.0%	100.0%

Debt

1. Credit Facilities not exceeding \$1,000,000,000 aggregate principal amount. Standby lines of credit with banks in the amount of \$750,000,000 have been executed but no borrowings were outstanding on March 31, 1991 or on the date of the Application;
2. The proposed remaining issuance of long-term debt obligations from PG&E to the State of California, Department of Water Resources, in an aggregate principal amount of \$106,549,868;
3. The proposed remaining issuance of not exceeding \$651,300,000 aggregate principal amount of debt securities;
4. The retirement at maturity of \$85,824,000 aggregate principal amount of outstanding First and Refunding Mortgage Bonds during the remainder of 1991 and in 1992;
5. The redemption of (a) \$95,700,000 aggregate principal amount to meet sinking fund requirements and (b) \$214,958,000 aggregate principal amount for early redemptions during the remainder of 1991 and in 1992;

6. The proposed issuance of up to \$1,000,000,000 aggregate principal amount of Debt Securities requested in the Application; and
7. The proposed remaining issuance (a total of \$1,458,947,969 aggregate principal amount) of the maximum amount of short-term debt securities.

Preferred Stock

8. The proposed issuance of Preferred Stock with an aggregate par value not exceeding \$75,000,000;
9. The redemption of (a) \$45,000,000 aggregate par value to meet mandatory and optional sinking fund requirements and (b) \$85,040,000 aggregate par value for early redemptions during the remainder of 1991 and in 1992; and
10. The proposed issuance of Preferred Stock with an aggregate par value not exceeding \$200,000,000.

Common Stock

11. The issuance of 9,447,900 shares of Common Stock remaining in connection with the existing Shelf Registration Program having estimated proceeds of \$243,283,425 using a stock price of \$25.75 (closing price of PG&E's Common Stock on June 17, 1991);
12. The issuance of 17,273,414 shares of Common Stock remaining in connection with the Savings Fund Plan having estimated proceeds of \$444,790,411 using a stock price of \$25.75;
13. The issuance of 9,490,641 shares of Common Stock remaining in connection with the Dividend Reinvestment Plan having estimated proceeds of \$244,384,006 using a stock price of \$25.75; and
14. The issuance of 1,500,000 shares of Common Stock in connection with the 1986 Stock Option Plan having estimated proceeds of \$38,625,000 using a stock price of \$25.75.

The pro forma capitalization ratios, as set forth above, do not include any future adjustments to retained earnings. Also, PG&E has stated that the maximum amount of short-term debt securities authorized by statute and Commission decision is

unlikely to be outstanding for any long period of time before being refinanced by other securities, which are also included in the pro forma capitalization ratios. In addition, due to the uncertain timing of the issuances of the debt, preferred stock and common stock previously authorized, and the future economic feasibility of the redeeming or refunding of PG&E's debt and preferred stock securities, PG&E has stated that the pro forma capitalization ratios may not be achieved.

PG&E is placed on notice, by this decision, that the Commission does not find that PG&E's capitalization ratios or the inclusion of short-term debt in its capitalization structure are necessary or reasonable for ratemaking purposes. These are issues which are normally tested in general rate or cost of capital proceedings.

Summary of Proposed Debt Transactions

PG&E seeks authority to issue, sell and deliver, in one or more series, Debt Securities and/or to unconditionally guarantee or otherwise secure the obligations of the Authorities with respect to their issuance of debt in connection with the tax-exempt financings of Qualified Facilities. Total issuance of Debt Securities and/or unconditional guarantees shall not exceed the aggregate principal amount of \$1,000,000,000.

PG&E requests that the terms and conditions of the proposed Debt Securities, including the price, interest rate, maturity date, redemption provisions, sinking fund (if any) and other provisions be determined by market conditions at the time of sale of each series of the Debt Securities.

The Debt Securities may be sold by means of competitive bidding, negotiated public offering, direct placements or other offerings exempt from the Commission's Competitive Bidding Rule set forth in Decision (D). 38614 dated January 15, 1946 in Case 4761, as amended by D.49941, D.75556 and D.81908 and as further modified

by Commission Resolution F-616 dated October 1, 1986. PG&E requests that if Debt Securities are sold by means of competitive bidding, the following procedures be observed:

1. PG&E will contact, by telephone or otherwise, a selected group of prospective bidders to invite the submission of bids for the purchase of the Debt Securities at such time and place as may be specified by PG&E;
2. PG&E does not intend to publish a public invitation for bids or to take any action to notify any other prospective bidders, although it will respond to requests for information and permit others to submit bids if they so choose; and
3. Bids may be submitted to PG&E by telephone or otherwise.

The types of Debt Securities PG&E may issue are generally described below.

A. Secured Debt Offerings (Bonds)

The Bonds, as part of the Debt Securities requested in the Application, will be issued in conformity with the provisions of, and secured by, PG&E's First and Refunding Mortgage, dated December 1, 1920, as amended by supplemental indentures (Mortgage).

B. Unsecured Debt Offerings (Notes)

The Debt Securities, if in the form of unsecured debentures or notes (collectively referred to as Notes), may be issued in accordance with an indenture that would set forth the aggregate principal amount, maturity, default and other material provisions of the Notes.

The Notes may be sold in public or private offerings, with fixed or floating rates, in senior or subordinated form. Notes may be sold in underwritten offerings or through agents on a best-efforts basis, and on a continuous or periodic basis.

Notes may be sold privately or publicly. A public offering in the United States will require registration under the federal securities laws by the filing of a registration statement

that includes a prospectus describing the Notes. An underwriting or agency agreement will govern PG&E's relationships with the firms that distribute Notes to investors. Also, Notes may be sold in domestic or European offerings.

C. Convertible Notes

One or more series of Notes may also be issued in convertible form. Such Notes would be convertible into shares of PG&E's Common Stock after a stated period until maturity, unless previously called for redemption, at a price per share to be set at the time of the offering. PG&E believes that a future issue of convertible debt may result in a significantly lower interest rate than would conventional debt and would carry a conversion premium of not less than 5% over the then current market price of PG&E's Common Stock. Therefore, PG&E requests authority to issue shares of its Common Stock. PG&E will effect any necessary registration of the Common Stock under federal securities laws which may be required before PG&E can deliver the Common Stock upon conversion of the Notes.

The aggregate principal amount of Debt Securities outstanding at the time of conversion will be reduced by an amount equivalent to the principal amount of debt that is converted into Common Stock.

D. Notes with Warrants

PG&E indicates that the Debt Securities may also be issued as Notes with attached warrants. One type of warrant entitles the bearer to purchase an additional Note during a period no longer than the nonredemption period for the original Note.

A second type of warrant, called an "equity warrant," would entitle the bearer to purchase shares of PG&E's Common Stock at a price per share to be set at the time of the offering. PG&E will effect any necessary registration of the Common Stock under federal securities laws which may be required before PG&E can deliver the Common Stock upon exercise of the warrants.

PG&E believes that interest savings may be possible through the issuance of Notes with attached warrants.

E. Medium-Term Notes

Medium-Term Notes (MTNs) are Notes offered on a continuous or periodic basis pursuant to a shelf registration statement filed with the Securities and Exchange Commission. Maturities generally range from nine months to fifteen years, although they can extend as far as thirty years. They are sold in public or private offerings, with fixed or floating rates, in senior or subordinated form.

F. Debt Securities Issued in Foreign-Denominated Currency

PG&E believes that opportunities for additional interest rate savings may exist through issuing Debt Securities denominated in the currency of a foreign country. PG&E alleges that exposure to fluctuations in the value of the dollar, in relation to the debt obligation in the foreign-denominated currency, would be minimized by one or more forward contracts to purchase the currency or an independent exchange of payment obligations with another party in a dollar-denominated currency.

CACD recommends that any reductions in the effective cost of money resulting from currency value fluctuations be passed on to ratepayers in future rate proceedings as a reduction in the cost of money for all debt securities in PG&E's capital structure. In order to protect ratepayers from currency value fluctuations, CACD also recommends that any losses incurred by PG&E as a result of currency value fluctuations on the redemption, refunding, or conversion of any of its Debt Securities should not be passed on to ratepayers in future rate proceedings as increases in the cost of money of all debt securities in PG&E's capital structure. We adopt both of CACD's recommendations.

PG&E is placed on notice, by this decision, that the Commission will review the reasonableness of the effective interest rates for any Debt Securities issued in a foreign-denominated currency.

G. Direct Loans (Loans)

PG&E anticipates that, from time to time, it may be advantageous to borrow directly from banks, insurance companies or other financial institutions. PG&E will enter into these Loans only when the Loans are designed to result in an overall cost of money lower than that available through the issuance of alternative Debt Securities.

H. Tax-Exempt Financings of Certain Qualified Facilities

Additionally, as part of the \$1,000,000,000 authorization sought in its Application, PG&E requests authority to issue and sell the Authorities one or more series of Debt Securities or, alternatively, to unconditionally guarantee, or otherwise secure, the Authorities' obligations in respect of their issuances of debt in connection with the financing of PG&E's Qualified Facilities.

The proposed financings with the Authorities may be structured as follows:

1. The Authority would issue and sell one or more series of its bonds, notes, debentures or other securities (Authority Bonds) plus accrued interest to a group of underwriters who would ultimately market the Authority Bonds to the general public. Concurrently with the sale and delivery of the Authority Bonds, PG&E would enter into a loan agreement, or other security agreement, with the Authority.
2. Concurrent with the sale and delivery of the Authority Bonds, PG&E would issue and deliver to the Authority, in consideration of the Authority's obligations under the loan agreement, or other security agreement, entered into with the Authority, its Debt Securities plus accrued interest (the terms and conditions of such indebtedness to be substantially consistent with the terms and conditions of the Authority Bonds), or would unconditionally guarantee, or otherwise secure, the

Authority's obligations in respect of the Authority Bonds.

The Authority Bonds could be issued in the form of long-term fixed-rate tax-exempt securities, or in the form of floating-rate short-term demand bonds, commercial paper, notes or some other variable interest rate tax-exempt debt instrument. As an additional obligation under the loan agreement, PG&E could cause to be delivered an irrevocable letter of credit, or other credit support facility, to the trustee of the Authority Bonds which would permit drawings by the trustee for the payment of unpaid principal and accrued interest on the Authority Bonds.

Interest Rate Caps and Collars

PG&E requests authority to enter into interest rate cap and collar agreements without the necessity for prior consent from the Commission.

In normal market conditions, variable interest rate debt initially carries a lower interest rate than comparable fixed-rate debt. However, there is the possibility that the variable rate could increase so that the average variable rate is higher than the fixed rate. In order to reduce ratepayers' exposure to interest rate risk, PG&E may negotiate some type of maximum rate, usually called a "cap." In that case, even if variable rates increase above the cap or "ceiling" rate, PG&E would only pay the ceiling rate. In addition to the ceiling rate, sometimes the counterparty to the contract desires to have a "floor" rate. In the event that the variable rate falls below the floor rate, PG&E would pay the floor rate. The floor and ceiling rates are called "interest rate collars" because the interest rate fluctuates within a band which is negotiated between PG&E and the counterparty. Such protection for variable-rate obligations is not unlike protection negotiated by consumers for variable-rate home mortgages.

Interest Rate Swaps

PG&E seeks authority, pursuant to PU Code Section 701, to enter into interest rate swap agreements (Swap) from time to time without the necessity for prior consent from the Commission. PG&E was granted authorization by the Commission, in D.88-04-063, as modified by D.89-12-043 and D.90-12-094, to enter into Swaps, subject to certain restrictions and limitations.

From time to time, PG&E claims it may be able to reduce its borrowing costs by issuing fixed- or floating-rate debt and entering into one or a series of Swaps to convert fixed interest payments into favorable floating-rate payments or vice versa, or to convert floating-rate payments tied to one index (e.g., the London Interbank Offering Rate (LIBOR)) into floating-rate payments tied to another index (e.g., the Federal Reserve Composite Rate for commercial paper). Examples of possible Swap transactions are as follows:

1. Instead of using fixed-rate debt, it may at times be advantageous for PG&E to issue Commercial Paper and enter into a Swap with a bank such that the bank pays PG&E the Federal Reserve Composite Rate for commercial paper and PG&E pays the bank a fixed rate. PG&E's Commercial Paper financing combined with the Swap results in a fixed-rate financing for PG&E. If the fixed-rate is lower than the rate at which PG&E could issued fixed-rate debt directly, then the result is a savings for ratepayers.
2. Instead of issuing floating-rate debt, it may at times be advantageous for PG&E to issue fixed-rate Notes and enter into a Swap with a bank such that the bank pays PG&E a fixed rate and PG&E pays the bank a floating rate. PG&E's fixed-rate financing combined with the Swap results in a floating-rate financing for PG&E. If this floating rate is lower than the rate at which PG&E could issue floating-rate debt directly, then the result is a savings.
3. Instead of issuing floating-rate debt with an interest rate tied to the Commercial Paper rate, it may at times be advantageous for PG&E to borrow at a floating rate based on another index (e.g., LIBOR) and enter into a Swap with a bank such that the bank

pays PG&E a LIBOR-based floating rate and PG&E pays the bank a Commercial Paper-based floating rate. PG&E's LIBOR-based borrowing combined with the Swap results in a Commercial Paper-based financing for PG&E. If this rate is lower than the rate at which PG&E could obtain Commercial Paper-based funding directly, then the result is a savings.

Swaps may be denominated in U.S. dollars or in a foreign currency. If PG&E enters into a Swap denominated in a foreign currency, PG&E asserts that any exchange risk will be hedged through one or more forward agreements or through a currency swap. Swaps would be negotiated with a major financial intermediary (such as a commercial bank) or directly with a principal seeking the other side of the Swap transaction. The Swap may specify that the exchange of interest payments will commence either immediately or at a future date. For example, if an advantageous Swap were available currently, but PG&E did not need funds until some future date, PG&E might enter into the Swap with the exchange of interest payments on that future date.

PG&E will enter into these Swaps only when such arrangements provide an overall cost of money lower than that available through the issuance of alternate Debt Securities. PG&E requests that the terms and conditions of the Swaps will be determined by PG&E according to market conditions at the time a Swap is negotiated.

In D.90-12-094, the Commission ordered that Swaps shall not be considered as additional debt for purposes of calculating the amount of authorization used. For example, if PG&E issues \$50,000,000 of fixed-rate debt and enters into a Swap in conjunction with that debt to swap it into \$50,000,000 of floating-rate debt, only \$50,000,000 of Commission authorization is used because PG&E's total indebtedness resulting from the fixed-rate issue and the Swap is \$50,000,000.

Consistent with D.90-12-094, the following restrictions and limitations will be placed on PG&E in relation to Swaps:

1. Reports

- a. Within fifteen days of entering into a Swap, PG&E will furnish to CACD a report analyzing the Swap including all costs associated with the Swap in comparison to a projection of "all-in" cost without a Swap.
- b. Within forty-five days of entering into a Swap, PG&E shall provide CACD with a complete copy of the executed agreement and all associated documentation.
- c. PG&E shall separately report all interest income and expenses arising from all Swaps in all monthly and annual financial reports to the Commission.

2. Limit on Rate Recovery

- a. If PG&E elects to terminate the Swaps before the original maturity or the Swap partner terminates the 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 Swaps

- a. Swaps shall not exceed at any time 20% of PG&E's total long-term debt outstanding (including Diablo Canyon).

PG&E is placed on notice by this decision, that the Commission will review the reasonableness of the effective interest rates for Swaps issued by PG&E in conjunction with PG&E's next cost of capital proceeding. Any reductions in the effective cost of money resulting from Swap transactions will be passed on to PG&E's ratepayers in future cost of capital proceedings as a reduction of the cost of money for all debt securities in PG&E's capital structure.

Exemption from the Competitive Bidding Rule for Interest Rate Cap, Collar and Swap Agreements and Debt Securities Issued in Connection with Interest Rate Cap, Collar or Swap Agreements

PG&E requests that (1) interest rate cap, collar and swap agreements and (2) Debt Securities issued in connection with interest rate cap, collar or swap agreements be exempt from the Competitive Bidding Rule.

In its Application, PG&E states that interest rate cap, collar and swap agreements are opportunistic transactions that are not always available to PG&E at an economic cost. When an economic interest rate cap, collar or swap agreement becomes available, PG&E asserts that it may be one of many firms to which the interest rate cap, collar or swap agreement has been presented. PG&E is concerned that without an exemption from the Competitive Bidding Rule, it will not be able to take advantage of the opportunity.

Similarly, PG&E requests that it be able to issue Debt Securities in connection with interest rate cap, collar or swap agreements when a lower interest rate can be obtained than would otherwise be available. PG&E attests that in order to arrive at a lower overall cost than PG&E otherwise could obtain, the Debt Security and the interest rate cap, collar or swap agreement must be priced as one transaction. PG&E states that the timing and the terms of the Debt Security and the interest rate cap, collar or swap agreement must match and one transaction cannot proceed without the other.

CACD has reviewed PG&E's request and CACD believes that PG&E has made a compelling showing that interest rate cap, collar and swap agreements and Debt Securities issued in conjunction with interest rate cap, collar and swap agreements should be exempted from the rule. CACD recommends that PG&E's request for the exemption, as stated above, be granted and we concur.

Exemption from and Other Modifications to the Competitive Bidding Rule

PG&E seeks authority to issue and sell its Debt Securities on a negotiated basis, and requests an exemption from and other modifications to the Commission's Competitive Bidding Rule, as modified by Resolution F-616 dated October 1, 1986, in which the Commission sets forth other provisions which exempt debt issues for which competitive bidding is not viable or available. PG&E requests additional modifications to the Competitive Bidding Rule in the following areas:

- a. Exemption for debt issues of \$300,000,000 principal amount or greater;
- b. Exemption for the issuance of MTNs on a continuous or periodic basis through dealers on a best-efforts or agency basis similar to PG&E's existing Commercial Paper program;
- c. Exemption for private placements with, or loans from, banks, insurance companies or other financial institutions, and for the issuance of Authority Bonds as described herein;
- d. Elimination of the one-day notice period contemplated in Resolution F-616; and
- e. Modification of the Competitive Bidding Rule to permit the use of such bidding procedures as are described below.

1. \$300 Million Principal Amount

Under Resolution F-616, the Commission may grant exemptions from the Competitive Bidding Rule for debt issues in excess of \$200,000,000 upon a compelling showing by a utility that, because of the size of the issue, an exemption is warranted. PG&E believes that compelling circumstances exist for an exemption for issues of \$300,000,000 principal amount or larger, and that the exemption would afford it the flexibility to meet its financial requirements on the most favorable terms available. Therefore,

PG&E requests an exemption from the Competitive Bidding Rule for debt issues of \$300,000,000 principal amount or greater.

PG&E believes that the size of a debt offering can determine whether a competitive bid or a negotiated basis will produce the lowest cost. PG&E asserts that in a negotiated offering, an underwriting syndicate can be formed that consists of virtually the entire investment banking community. PG&E believes that because competitive bidding divides the community into several competing bidding syndicates, each syndicate has fewer participants. As a result, PG&E attests that each participant must agree to underwrite a larger portion of the issue and thereby increase its risk. PG&E states that for small issues this may not result in a higher cost, but for large issues the participants may require a premium to take on the greater risk.

PG&E states in its Application that statistics suggest that, while the capital markets can accommodate competitive bidding for issues larger than \$300,000,000, such issues are infrequent and generally are restricted to companies that have high credit ratings. As a result, PG&E alleges that competitive bidding for issues of \$300,000,000 or larger may result in a higher cost of funds. PG&E notes in the Application that few companies have used the competitive bidding process for debt transactions of \$300,000,000 or greater.

2. Medium-Term Note (MTN) Program

PG&E asserts that the PG&E MTN program would be marketed like PG&E's existing Commercial Paper program through a group of dealers on a best-efforts of agency basis that is incompatible with the Competitive Bidding Rule. PG&E requests an exemption from the Competitive Bidding Rule for the issuance of Notes on a continuous or periodic basis through dealers on a best-efforts or agency basis.

3. Private Placements, Loans and Authority Bonds

Exhibit A to Resolution F-616 states:

Securities privately placed with specific lenders and bank term loans obviously must be negotiated.... Certain tax-exempt pollution control bonds have terms which are specifically negotiated.... It is reasonable that these types of debt instruments should be exempt from the Competitive Bidding Rule.

PG&E requests an exemption from the Competitive Bidding Rule for private placements of Debt Securities with, or direct loans from, banks, insurance companies or other financial institutions, and for the issuance of Authority Bonds as described herein.

4. One-Day Notice Period

For Debt Securities sold under the Competitive Bidding Rule, PG&E seeks authority to eliminate the one-day notice requirement contained in Resolution F-616. PG&E alleges that through the use of the Securities and Exchange Commission's shelf registration procedures, it is possible to price an offering when market conditions appear favorable. PG&E asserts, therefore, that it is desirable to be able to contact the prospective bidders and adjust the terms of the offering up to the last moment. PG&E states that the adjustments in the size or terms of the offering might come on the day of the pricing in response to the market conditions. PG&E alleges that the prospective bidders can adequately respond to the adjusted terms without having a 24-hour period to consider the change.

5. Use of Certain Bidding Procedures

In order to provide added flexibility to take advantage of market opportunities, PG&E requests that the Commission modify the Competitive Bidding Rule to permit PG&E to use the following procedures: (a) to accelerate, postpone or cancel the scheduled date and time for receipt of bids, (b) to reject all bids submitted, (c) to request the resubmission of bids, (d) to

reschedule subsequent receipt of bids, and (e) to vary the amount, terms and conditions of the Debt Securities submitted for bids. PG&E seeks permission to take all five of these actions without notice by newspaper publication.

CACD has reviewed PG&E's requests and reasons for further modifications of the Competitive Bidding Rule as modified by Resolution F-616 for: 1) \$300 Million Principal Amount, 2) MTNs, 3) Private Placements, Loans and Authority Bonds, 4) One-Day Notice Period, and 5) the Use of Certain Bidding Procedures. CACD has determined that PG&E has made a compelling showing that the exemptions requested are warranted and recommends that PG&E's requests be granted. We will accept CACD's recommendation.

We place PG&E on notice that in its next cost of capital proceeding before the Commission, the reasonableness of the interest rate and cost of money resulting from the issue of PG&E's Debt Securities will be closely scrutinized and may result in an adjustment of the interest expense, if it is determined that the cost of money incurred was not prudent. We will also require PG&E to provide us with a showing of why PG&E believes that the resulting interest rate and cost of money were advantageous to PG&E and its ratepayers. We will require this showing within thirty days after issuance of its Debt Securities.

General Order Series 24 Modification

Since the MTN Program is designed for continuous or periodic sales, PG&E stated in the Application that strict compliance with General Order Series 24 (G.O. 24) could require daily filings with the Commission. PG&E requests authorization to be relieved of the necessity of complying with the Commission's G.O. 24 for sales of Debt Securities under the MTN Program. In lieu of a report or reports under G.O. 24, PG&E proposes to file with the Commission, on or before the 25th day of the month

following each quarter, a statement for the preceding quarter showing the aggregate principal amount, interest rate, maturity and cost to PG&E of Debt Securities sold in connection with the MTN Program.

PG&E asserts that this proposal is consistent with the reports currently requested by the Commission for PG&E's current shelf registration program for its Common Stock, Dividend Reinvestment Plan and Savings Fund Plan.

CACD has reviewed PG&E's request and its reason for exemption of the MTN Program from the reporting requirements under G.O. 24. G.O. 24 would not require PG&E to make daily filings for reporting on the issuances under its MTN program. G.O. 24 only requires a single report be filed each month for the previous month's activities. However, to be consistent with the treatment awarded to PG&E in D.87-12-002 granting relief from the necessity of complying with G.O. 24 for sales of Debt Securities under the MTN Program, CACD recommends that PG&E continue to be relieved of the necessity of complying with G.O. 24 for sales of Debt Securities under the MTN Program. CACD concurs that PG&E should file with the Commission, on or before the 25th day of the month following each quarter, a statement for the preceding quarter showing the aggregate principal amount, interest rate, maturity and cost to PG&E of Debt Securities sold in connection with the MTN Program. We will accept CACD's recommendations.

Use of Proceeds

PG&E proposes to use the proceeds from the proposed sale of securities, other than accrued interest and after payment and discharge of obligations incurred for expenses incident to the issuance and sale, for the following purposes:

- a. For the acquisition of property;
- b. For the construction, completion, extension or improvement of its facilities;

- c. For the improvement or maintenance of its services;
- d. For the discharge or lawful refunding of its obligations;
- e. For the reorganization or readjustment of its indebtedness or capitalization upon merger, consolidation or other reorganization;
- f. For the possible redemption or purchase, if economic, and retirement of a portion of its outstanding debt or Preferred Stock to partially reimburse PG&E for monies actually expended from income or other monies in its treasury not secured by or obtained from the issue of stocks, stock certificates or other evidences of interest or ownership, or bonds, notes or other evidences of indebtedness, for the purposes mentioned above except maintenance of service and replacements;
- g. For future capital additions and improvements for its Qualified Facilities; or
- h. For such other purposes as are described in PU Code Section 817. The amounts so reimbursed will become a part of PG&E's general treasury funds.

PG&E proposes to use a portion of such general treasury funds to repay a portion of its short-term borrowings outstanding at the time of PG&E's receipt of these proceeds.

Rule 33(c) of the Rules of Practice and Procedure specifies certain data that are to be included in applications under PU Code Sections 816 through 830. In its Application and supporting workpapers, PG&E failed to include for item e., above, a full description of the indebtedness or capitalization to be readjusted or exchanged; complete terms and conditions of the merger, consolidation, exchange, or other reorganization; a pro forma balance sheet, if possible, giving effect to such reorganization, readjustment, or exchange; and a statement of the reason or necessity for the transaction. Because this information

was not included in the Application, CACD recommends that the Commission not authorize the use of the proceeds for item e. above. The Commission concurs and adopts CACD's recommendation.

Findings of Fact

1. PG&E, a California corporation, operates as a public utility subject to the jurisdiction of this Commission.

2. PG&E has need for external funds as set forth in the Application.

3. Use of the proposed Debt Securities and Common Stock for the reorganization or readjustment of its indebtedness or capitalization upon merger, consolidation or other reorganization is not a proper purpose in the absence of the information required by Rule 33(c). The proposed Debt Securities and Common Stock will be used for proper purposes except those noted above.

4. The proposed agreement requiring PG&E to provide security for the Authority Bonds would not be adverse to the public interest.

5. The money, property or labor to be procured, or paid for, by the proposed Debt Securities is reasonably required for the purposes specified in the Application, except for those noted above.

6. The use of interest rate cap, collar and swap agreements in appropriate circumstances is reasonable.

7. Authorizing PG&E to determine the amount, timing, terms and conditions, and method of offering its proposed Debt Securities under the Commission's Competitive Bidding Rule within the constraints and modifications as set forth in the Decision would not be adverse to the public interest.

8. It is proper for ratemaking purposes that any reduction in the effective cost of money resulting from currency value fluctuation on Debt Securities issued in foreign-denominated

currency be passed on to ratepayers in future rate proceedings as a reduction in the cost of money for all Debt Securities.

9. It is proper for ratemaking purposes that any losses incurred by PG&E as a result of currency value fluctuations on the redemption, refunding, or conversion of any of its debt securities will not be passed on to ratepayers in future rate proceedings as increases in the cost of money of all debt securities in PG&E's capital structure.

10. It is proper for ratemaking purposes that any reduction in the effective cost of money resulting from Swaps be passed on to ratepayers in future cost of capital proceedings as a reduction in the cost of money for all Debt Securities.

11. The Commission does not, by this decision, determine that PG&E's construction budget is necessary or reasonable for ratemaking purposes. These issues are normally tested in general rate or rate base offset proceedings.

12. PG&E is placed on notice, by this decision, that the Commission does not find that PG&E's capitalization ratios or the inclusion of short-term debt in its capitalization structure is necessary, or reasonable, for ratemaking purposes. These are issues normally tested in general rate or cost of capital proceedings.

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

Conclusions of Law

1. A public hearing is not necessary.

2. The Application should be granted to the extent set forth in the order which follows.

3. The proposed Debt Securities and Common Stock are for lawful purposes, except those noted above, and the money, property or labor to be obtained by them is required for these

purposes. Proceeds from the security issues may not be charged to operating expenses or income.

4. In issuing our order, we place PG&E and its shareholders on notice that the number of shares outstanding, the total par or book value of these shares and the dividends paid do not determine the allowable return on plant investment. This authorization is not a finding of the value of PG&E's stock or property, nor does it indicate the amounts to be included in rate setting procedures.

5. Taking into consideration the fee exemption allowed by PU Code Section 1904(b), as a result of credits from prior outstanding indebtedness and preferred stock refundings, as shown in Exhibit C attached to the Application, no fees are due or payable with respect to the proposed issuance and sale of the \$1,000,000,000 aggregate principal amount of PG&E's Debt Securities.

6. The following order should be effective on the date of signature, to enable PG&E to proceed with its financings expeditiously.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E), on or after the effective date of this order and on or prior to December 31, 1993, is authorized to do the following:

- a. To issue, sell and deliver, in one or more series: its First and Refunding Mortgage Bonds, debentures, convertible debentures, debentures with warrants, promissory notes and/or other evidences of indebtedness and to enter into direct loans from banks, insurance companies or other financial institutions (Debt Securities); and/or to unconditionally guarantee or otherwise

secure the obligations issued by, or on behalf of, the State of California or any political subdivision (Authorities) in respect of the financing of PG&E's water pollution control facilities, sewage systems, solid waste disposal facilities, and any other facilities qualifying for tax-exempt financing under the Internal Revenue Code or any combination thereof (Qualified Facilities), with all such issues and sales of the Debt Securities and/or unconditional guarantees being upon terms and conditions substantially consistent with those set forth in or contemplated by this decision and not to exceed an aggregate principal amount of \$1,000,000,000;

- b. To enter into one or more interest rate caps, collars or swap agreements from time to time without the necessity for prior consent from the Commission, subject to the restrictions and limitations set forth in this Decision; any such interest rate caps, collars or swap agreements shall not be considered as additional debt for purposes of calculating the amount of authorization used and any such interest rate caps, collars or swap agreements shall be exempt from the Commission's Competitive Bidding Rule;
- c. To issue, sell and deliver such Debt Securities under the Commission's Competitive Bidding Rule with exemptions therefrom for debt issues of \$300,000,000 or greater, for the issuance of notes through PG&E's Medium Term Note (MTN) Program on a continuous or periodic basis through dealers on a best-efforts or agency basis, and for private placements with, or loans from, banks, insurance companies or other financial institutions, and the issuance of Authority Bonds as described herein; with the elimination of the one-day notification requirement specified in the Competitive Bidding Rule; and with modification to permit the use of the bidding procedures described in this Decision;
- d. To issue such number of shares of its Common Stock in exchange for and upon retirement of Debt Securities issued, as set forth in this Decision, upon conversion of the Debt Securities and in exchange for equity warrants, as may be required from time to time;

- e. To be relieved of the necessity of complying with the Commission's General Order Series 24 for the issuance of MTNs;
- f. To use the net proceeds from the sale of securities (exclusive of accrued interest which would be used for general corporate purposes) for the purposes set forth in this Decision;
- g. To use any accrued interest received in connection with the issue or issues of Debt Securities for general corporate purposes; and
- h. To sell, lease, assign, mortgage, or otherwise dispose of or encumber utility property in connection with the issuance and sale of any Debt Securities under the Application.

2. PG&E is limited to interest rate swap agreements (Swaps) involving no more than 20% of its Long-Term Debt at any one time.

3. Within 30 days after PG&E ascertains (a) the price, interest rate and other terms pertaining to the Debt Securities; (b) the amount of Common Stock that may be issued upon the conversion of Debt Securities or the exercise of equity warrants; and (c) the conversion or warrant price and applicable ratio, PG&E shall notify the Commission Advisory and Compliance Division (CACD) in writing.

4. For the Debt Securities sold by competitive bidding, PG&E shall submit a written report with CACD showing, for each bid received, the name of the bidder, the price, interest rate and cost of money to PG&E based on the price and interest rate within five business days.

5. If the Debt Securities are sold in a public offering, PG&E shall submit to CACD three copies of its final prospectus pertaining to the Debt Securities as soon as it is available.

6. Within 30 days after the issuance and sale of any series of Debt Securities or negotiated private placements,

including commercial bank borrowings, in either the domestic or foreign markets, PG&E shall submit to CACD a report showing why the resulting interest rate and cost of money were the most advantageous to PG&E and its ratepayers.

7. In lieu of reports required by General Order 24 for the MTN Program, PG&E shall submit to CACD, on or before the 25th day of the month following each quarter, a statement for the preceeding quarter showing the aggregate principal amount, interest rate, maturity and cost to PG&E of Debt Securities sold in connection with the MTN Program.

8. PG&E shall submit the reports required by General Order Series 24 except as noted above.

9. Within fifteen days of entering into a Swap, PG&E will furnish to CACD a report analyzing the Swap including all costs associated with the Swap in comparison to a projection of "all-in" cost without a Swap.

10. Within forty five days of entering into a Swap, PG&E shall provide CACD with a complete copy of the executed agreement and all associated documentation.

11. PG&E shall separately report all interest income and expenses arising from all Swaps in all monthly and annual financial reports to the Commission.

12. Application 91-08-058 (Application) is granted and denied in part as previously specified and as set forth above.

13. PG&E shall submit an original and four copies of the reports required by Ordering Paragraphs 3 through 11 to CACD with a transmittal letter stating the application and decision numbers. Parties need not be served with copies of the reports unless they request from PG&E such service in writing. When service is made on parties who request copies of the report, PG&E shall attach to its report a certificate showing service by mail upon all those requesting copies. The Director of CACD shall send the original and one copy to the Docket Office for filing.

12. Taking into consideration the fee exemption allowed by Public Utilities Code Section 1904(b), as a result of credits from prior outstanding indebtedness and Preferred Stock refundings, as shown in Exhibit C attached to the Application, no fees are due or payable with respect to the proposed issuance and sale of the \$1,000,000,000 aggregate principal amount of PG&E's Debt Securities.

This order is effective today.

Dated December 4, 1991, at San Francisco, California.

PATRICIA M. ECKERT

President

JOHN B. OHANIAN

DANIEL Wm. FESSLER

NORMAN D. SHUMWAY

Commissioners

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


NEAL J. SHULMAN, Executive Director

PG