

CACD/RHG

Decision 92-06-023 June 3, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
SAN DIEGO GAS & ELECTRIC COMPANY )  
(U-902-E) requesting approval of the )  
proposed Investment Manager Agreements )  
with Brown Brothers Harriman and )  
Company, Delaware Investment Advisers, )  
and Fidelity Management Trust Company )  
for Management of its Nuclear )  
Decommissioning Qualified and )  
Nonqualified Master Trusts. )

ORIGINAL

Application 92-03-013  
(Filed March 3, 1992)

O P I N I O N

Summary of Decision

This decision grants San Diego Gas & Electric Company (SDG&E) approval of Investment Manager Agreements for management of its nuclear decommissioning trusts.

SDG&E's Request

SDG&E requests the Commission to approve the proposed Investment Manager Agreements (Agreements) with Brown Brothers Harriman and Company (Brown Brothers), Delaware Investment Advisers (Delaware), and Fidelity Management Trust Company (Fidelity), and to authorize the Executive Director to sign such Agreements on behalf of the Commission.

Since 1987, Delaware has been retained to direct the investment of trust fund assets. By this Application, SDG&E is requesting the approval of the Agreements with two new Investment Managers, Brown Brothers and Fidelity. SDG&E is also requesting approval of a revised Agreement with Delaware, the existing Trust Fund Manager.

Notice of the filing appeared on the Commission's Daily Calendar of March 12, 1992. No protests have been received.

Background

In Order Instituting Investigation 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 Decision (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, SDG&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 § 468A of the Internal Revenue Code and a Nonqualified Trust Agreement was designed to hold the remaining funds. SDG&E's Master Trust Agreements were approved by the Commission on November 25, 1987, and were executed shortly thereafter.

Both trusts provided 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 SDG&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, by Resolution E-3070, 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 (Delaware) to direct the investment of the Qualified and Nonqualified Trusts. As authorized by Resolution E-3070, an Investment Manager Agreement was executed by all the parties. The trusts were initially funded in December, 1987.

Request for Order Approving Investment Manager Agreements

The Qualified and Nonqualified Trusts provide, "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." The Commission in D.87-05-062 and Resolution E-3070 explicitly required its approval of all Agreements.

On November 26, 1991, the Committee voted to retain Fidelity as Equity Investment Manager for the Nonqualified Trust. On December 13, 1992, the Committee voted to retain Brown Brothers as Fixed-Investment Manager for the Qualified and Nonqualified Master Trusts, and Delaware as Fixed-Income Manager for the Qualified Master Trust.

On September 26, 1991, the Committee directed its staff to interview six of the ten final equity candidates and present two candidates for final selection at the November 26, 1991 meeting. After extensive interviews and presentations, the Committee concluded that based upon the selection criteria, Fidelity best fulfilled the Committee's goals and objectives for an Equity Investment Manager.

On June 17, 1991, the Committee directed its staff to interview all eight of the final fixed-income candidates and present two for final selection at the December 13, 1991 meeting. After the presentations, the Committee believed that, based upon the selection criteria, Brown Brothers and Delaware together best fulfilled the Committee's objectives for the fixed-income portion of the trusts.

The Committee proposes to execute Agreements with Brown Brothers, Delaware, and Fidelity (attached to the Application as Attachments A, B, and C, respectively), upon approval of the Commission. Although the Agreements are not identical, they all include provisions and terms common to Agreements already approved by the Commission.

Section 11 of each Agreement provides for fees comparable to those paid to the existing Investment Manager, Delaware. Section 10 of the Qualified Agreements, addressing manager liability, provides for comparable liability protection for the Qualified Trust, as does the existing Manager Agreement already approved by the Commission.

After approval and execution of the Agreements, the Committee intends to fund the Fidelity investment account with the existing equity assets contained within the Nonqualified Trust. In addition, the Brown Brothers investment accounts will be funded with (1) the fixed-income portion of the Nonqualified Trust and (2) \$16.0 million of the Qualified Trust assets. Fidelity and Brown Brothers will attempt to minimize liquidation of trust assets in the transfer. In addition, new contributions for fixed-income investments will be entirely diverted to Brown Brothers until the portfolios of Brown Brothers and Delaware are approximately equal. At that time, contributions for fixed-income investments will be divided equally.

We will grant the requested approval. The materials submitted by SDG&E demonstrate that the Agreements are in compliance with D.87-05-062 and Resolution E-3070.

Request for Ex Parte Relief

In the interests of time and administrative efficiency, and because there are no additional facts to be provided or issues to be decided, SDG&E requests that the Commission act on the Application on an ex parte basis and without hearings.

We will grant SDG&E's request. Ex parte treatment of this Application will have no adverse impact on the public interest

because, as the Commission has already determined, the 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 safeguard to preserve the assets of the trust funds and maximize the earnings on allowable investments." (Resolution E-3070, mimeo, p. 5, Finding No. 3.)

Findings of Fact

1. SDG&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 SDG&E to obtain the Commission's approval prior to executing the Trust Agreements for its San Onofre Nuclear Generating Station.
4. In Resolution E-3070, the Commission approved the appointment by SDG&E's Interim Committee of Delaware as the first investment manager to direct the investment of the Qualified and Nonqualified Trusts.
5. In this Application, SDG&E requests approval of a proposed Investment Manager Agreement between the Committee and Fidelity for the Nonqualified Trust.
6. In this Application, SDG&E requests approval of a revised Investment Manager Agreement between the Committee and Delaware for the Qualified Trust.
7. In this Application, SDG&E also requests approval of a proposed Investment Manager Agreement between the Committee and Brown Brothers for both the Qualified and Nonqualified Trusts.
8. In support of this Application, SDG&E has submitted profiles of Brown Brothers, Delaware and Fidelity.
9. The proposed Agreements are in compliance with the requirements of D.87-05-062 and Resolution E-3070.

10. In conforming to D.87-05-062 and Resolution E-3070, the proposed Agreements provide adequate requirements that Brown Brothers, Delaware, and Fidelity, as Investment Managers, will be fairly evaluated on a reasonable and a regular basis, while assuring the necessary latitude and safeguards.

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 § 701 of the Public Utilities Code, the Commission's Rules of Practice and Procedure, and prior decisions, orders and resolutions of the Commission and specifically D.87-05-062 and Resolution E-3070.

2. A public hearing is not necessary.

3. SDG&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 SDG&E to proceed with its plans in an expeditious manner.

ORDER

IT IS ORDERED that:

1. San Diego Gas & Electric Company is granted approval to execute its proposed Investment Manager Agreements (Agreements) between the Nuclear Facilities Decommissioning Master Trust Committee and Brown Brothers Harriman and Company, Delaware Investment Advisers and Fidelity Management Trust Company.

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

This order is effective today.

Dated June 3, 1992 at San Francisco, California.

DANIEL Wm. FESSLER  
President  
JOHN B. OHANIAN  
PATRICIA M. ECKERT  
NORMAN D. SHUMWAY  
Commissioners

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

  
NEAL J. SHULMAN, Executive Director