

CACD/RHG

Decision 92-06-024 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 )  
appointment of State Street Bank and )  
Trust Company as Trustee of its )  
Nuclear Decommissioning Master Trusts.)

**ORIGINAL**

Application 92-03-032  
(Filed March 11, 1992)

O P I N I O N

Summary of Decision

This decision approves the appointment of a new Trustee of the nuclear decommissioning trusts of San Diego Gas & Electric Company (SDG&E).

SDG&E's Request

SDG&E requests the Commission to approve the appointment of State Street Bank and Trust Company (State Street) as Successor Trustee of SDG&E's decommissioning trusts, and to execute restated Trust Agreements with the Successor Trustee. Since the inception of the SDG&E trusts, Harris Trust and Savings Bank (Harris) has been the Trustee.

By this Application, SDG&E is requesting the approval of a Successor Trustee, and the execution of a restated Trust Agreement.

Notice of the filing appeared on the Commission's Daily Calendar of March 18, 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. One Trust Agreement was established as the vehicle to hold the decommissioning funds which qualify for an income tax deduction under § 468A of the Internal Revenue Code (Qualified Trust) and the other was designed to hold the remaining funds (Nonqualified Trust). On November 25, 1987, SDG&E's trusts were approved by the Commission and were executed shortly thereafter by the Commission, SDG&E, and the Trustee.

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 SDG&E.

Article IV, § 4.01 of the Qualified and Nonqualified Trust Agreements provide that the Committee shall have the right to remove the acting Trustee and appoint another entity as a Successor Trustee. Article II, § 2.12 of the Qualified Trust Agreement and Article II, § 2.10 of the Nonqualified Trust Agreement provide that the Committee may amend the Trust Agreements by filing a copy of the amendment with the Commission. D.87-05-062 and Resolution E-3060 expressly require Commission approval of all subsequent proposed Trust Agreements.

Request for Order Approving Substitute Trustee and Associated Restated Trust Agreement

As set forth above, the Qualified and Nonqualified Trust Agreements allow the Committee to replace the Trustee and appoint a Successor Trustee. In turn, the Commission has effectively required its approval of this action, which requires revision of the trust documents.

In its meeting of December 13, 1991, the Committee voted to replace Harris and in its place, appoint State Street as Trustee.

The Committee's process in deciding to replace Harris and appoint State Street as Trustee was complete and comprehensive. The Committee's rationale for appointing State Street was submitted to the Commission, shown as Attachment B to the Application. Among other factors, the Committee's determination was supported by considerations of accuracy, timeliness, and reporting capabilities. In addition, the Committee concluded that State Street's fees were competitive with Harris' fee structure.

Based on the Committee's vote, SDG&E proposes to execute, upon approval of the Commission, restated Master Trust Agreements with State Street shown as Attachments C and D to the Application, with essentially identical terms as the existing Agreements, except for a revised Fee Schedule (p.54, Qualified Trust, p.51, Nonqualified Trust) and the incorporation into the Nonqualified Trust of Amendment No. 1 to the Nonqualified Decommissioning Master Trust Agreement (Nonqualified Trust, Article VI, § 6.02, p.38), which was previously approved by the Commission in D.89-06-022. This Amendment allows for reimbursement from the trust to SDG&E for taxes paid by SDG&E on Nonqualified Trust earnings. The remaining changes from the present Trust Agreements are technical and conforming in nature.

The Committee intends that, after the Commission issues its Order, the resignation of Harris as Trustee and the substitution of State Street will proceed as soon as is reasonably practicable.

The Commission Advisory and Compliance Division (CACD) has an ongoing monitoring program and has met from time to time with the Committees of all three utilities which have nuclear decommissioning trust funds, the original Trustee for all California Decommissioning Trusts, Harris, and all of the Trusts' Investment Managers.

We will authorize the requested appointment of State Street as Trustee.

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. The rationale for affirming ex parte treatment here is the same as the Commission used in approving the appointment of new investment managers on an ex parte basis: namely, there are no additional facts to be provided or issues to be decided, and the public interest will be protected because there are adequate procedures in place to monitor the Trustee's performance, in this case, State Street, on a reasonable and regular basis. In this regard, Article III, § 3.05 of the trusts expressly requires the Committee to provide annual reports as to whether the Trustee should be replaced, as well as a tri-annual report evaluating on a competitive basis other firms which can provide the Trustee function.

We will grant SDG&E's request.

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-3060, the Commission required its approval of all subsequent Trust Agreements.
5. SDG&E requests approval of State Street as Successor Trustee.
6. SDG&E requests approval of the proposed restated Trust Agreement between itself and State Street.
7. In support of the Application, SDG&E has included considerations supporting the substitution of State Street as Trustee.

8. The restated Trust Agreements are within the requirements of D.87-05-062 and Resolution E-3060.

9. In conforming to D.87-05-062 and Resolution E-3060, the Trust Agreements provide adequate requirements that State Street, as Trustee, will be fairly evaluated on a reasonable and a regular basis, while assuring the necessary latitude and safeguards.

10. 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 resolution of the Commission and specifically D.87-05-062 and Resolution E-3060.

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

O R D E R

IT IS ORDERED that:

1. The replacement of Harris Trust and Savings Bank, the present Trustee of the nuclear decommissioning trusts of San Diego Gas & Electric Company (SDG&E) with State Street Bank and Trust Company is approved.

2. SDG&E is granted approval to execute its proposed restated Trust Agreements with State Street Bank and Trust Company.

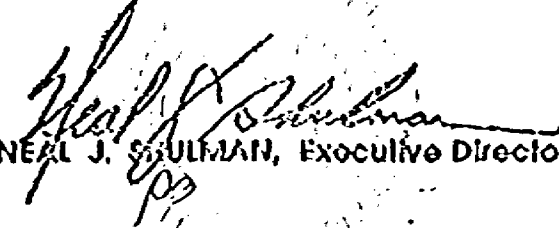
3. The Executive Director is directed to sign such Trust Agreements on behalf of the Commission.

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. SULMAN, Executive Director