

ORIGINAL

Decision **S2 04 077** **APR 21 1982**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of **PACIFIC GAS AND ELECTRIC COMPANY** for an Order Modifying Decision No. 92555 dated December 30, 1980 Approving a Nuclear Fuel Financing. } Application 82-02-18 (Filed February 9, 1982)

O P I N I O N

By Decision (D.) 92555 dated December 30, 1980 in

Application (A.) 60046, Pacific Gas and Electric Company (PG&E) was authorized under Public Utilities (PU) Code Sections 701, 816 through 818, 830, and 851 to enter into a nuclear fuel financing with Pacific Energy Trust (Energy).

In the current Application for Modification of D.92555,

PG&E's requests authority, under PU Code Sections 701, 816 through 818, 830, and 851, as follows:

1. To continue to lease nuclear fuel;
2. To amend its Nuclear Fuel Lease (Lease) and certain other documents to increase the credit limit available to Energy from \$300,000,000 up to \$400,000,000 to finance the purchase of nuclear fuel; and to
3. To modify Ordering Paragraph 3 of D.92555 to execute, deliver, and perform a Promissory Note increasing the present note from \$150,000,000 up to \$160,000,000, an increase of \$10,000,000, to Energy and to continue to be exempted from the Commission's competitive bidding rule.

Prior to the execution of the Lease, the Commission has approved PG&E's lease of nuclear fuel in accordance with the terms and conditions of the Lease (D.92555 dated December 30, 1980 in right A.60046). This approval was granted under PU Code Section 701. At that time, the Commission determined that the Lease did not involve a commitment by PG&E as guarantor or issuer of indebtedness within the meaning of PU Code Sections 816 through 818, 830, or 851.

PG&E is currently participating in negotiations to amend the Lease, Credit Agreement, and Consent and Agreement to increase the credit limit available to Energy from \$300,000,000 to \$400,000,000. These changes are discussed below.

- A. Lease Amendment No. 1 - PG&E is currently negotiating Lease Amendment No. 1 to the Lease. Lease Amendment No. 1 is designed only to provide that the limitation on the total nuclear fuel investment of Energy will be increased from \$400,000,000 to \$500,000,000. The Lease Amendment No. 1, substantially in the form which PG&E believes it will be executed, is attached to the application as Exhibit E. The Commission's Revenue Requirements Division has reviewed Lease Amendment No. 1 and does not believe that it materially alters the

terms and conditions of the Lease. Under the terms of the Lease, Energy has acquired and may continue to acquire from PG&E certain rights to nuclear fuel intended to be used in reactor cores of the Diablo Canyon Nuclear Plant. Energy has acquired and may continue to acquire from PG&E

CORRECTION

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

ORIGINAL

Decision S2 04 077 APR 21 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC COMPANY for an Order Modifying Decision No. 92555 dated December 30, 1980 Approving a Nuclear Fuel Financing. Application 82-02-18 (Filed February 9, 1982)

O P I N I O N

By Decision (D.) 92555 dated December 30, 1980 in

Application (A.) 60046, Pacific Gas and Electric Company (PG&E) was authorized under Public Utilities (PU) Code Sections 701, 816 through 818, 830, and 851 to enter into a nuclear fuel financing with Pacific Energy Trust (Energy).

In the current Application for Modification of D.92555, PG&E's requests authority, under PU Code Sections 701, 816 through 818, 830, and 851, as follows:

1. To continue to lease nuclear fuel;
2. To amend its Nuclear Fuel Lease (Lease) and certain other documents to increase the credit limit available to Energy from \$300,000,000 up to \$400,000,000 to finance the purchase of nuclear fuel; and
3. To modify Ordering Paragraph 3 of D.92555 to execute, deliver, and perform a Promissory Note increasing the present note from \$150,000,000 up to \$160,000,000, an increase of \$10,000,000, to Energy and to continue to be exempted from the Commission's competitive bidding rule.

This decision grants PG&E the authority to amend and continue its Lease and certain other documents to increase the credit limit available to Energy from \$300,000,000 to \$400,000,000 and modifies Ordering Paragraph 3 of D.92555 to allow PG&E to issue a Promissory Note of \$160,000,000.

Notice of filing of the application for modification of D.92555 appeared in the Commission's Daily Calendar of February 11, 1982. No protests have been received.

PG&E, a California corporation, operates as a public utility under the jurisdiction of this Commission. PG&E engages in the business of generating, purchasing, transmitting, and selling electricity and of purchasing, transporting, transmitting, and selling natural gas to 47 counties in central and northern California. The company also provides a small amount of incidental water and steam services.

PG&E entered into the Lease with Energy on February 4, 1981 by transferring to the Co-Trustee of Energy its rights, title, and interest to its nuclear fuel and to certain contracts concerning nuclear fuel. As of December 31, 1981, PG&E had approximately \$278,000,000 of nuclear fuel subject to the Lease.

Prior to the execution of the Lease, the Commission approved PG&E's lease of nuclear fuel in accordance with the terms and conditions of the Lease (D.92555 dated December 30, 1980 in Energy A.60046). This approval was granted under PU Code Section 701. At that time, the Commission determined that the Lease did not involve a commitment by PG&E as guarantor or issuer of indebtedness within the meaning of PU Code Sections 846 through 848, 830, or 851.

PG&E is currently participating in negotiations to amend the Lease, Credit Agreement, and Consent and Agreement to increase the credit limit available to Energy from \$300,000,000 to \$400,000,000. These changes are discussed below:

- A. Lease Amendment No. 1 - PG&E is currently negotiating Lease Amendment No. 1 to the Lease. Lease Amendment No. 1 is designed only to provide that the limitation on the total nuclear fuel investment of Energy will be increased from \$400,000,000 to \$500,000,000. The Lease Amendment No. 1 is substantially in the form which PG&E believes it will be executed. It is attached to the application as Exhibit E. The Commission's Revenue Requirements Division has reviewed Lease Amendment No. 1 and does not believe that it materially alters the

Under the terms of the Lease, Energy has acquired and may continue to acquire from PG&E certain rights to nuclear fuel intended to be used in reactor cores of the Diablo Canyon Nuclear Plant. Energy has acquired and may continue to acquire from PG&E

certain rights concerning nuclear fuel under contracts which PG&E has entered or may enter. Energy has purchased nuclear fuel or other rights to it under these contracts for purposes of the Lease.

The more important provisions of the Nuclear Fuel Lease include:

PG&E will transfer to Energy its right, title, and interest to its nuclear fuel inventory and to certain contracts concerning nuclear fuel which it has entered or may thereafter enter.

2. Energy shall thereafter pay such amounts as become due and payable under these assigned contracts.

3. Energy shall reimburse PG&E for all amounts paid by PG&E and for the costs incurred in obtaining these rights.

4. PG&E will retain all rights and responsibilities regarding the nuclear fuel other than the making of payments and holding title to it.

5. For the term of the Lease, PG&E will lease all nuclear fuel owned and to be owned by Energy.

6. The Lease, unless terminated earlier, shall terminate on June 30, 2030.

The Lease is a full net lease which means that PG&E will be responsible for operating, maintaining, repairing, replacing, and insuring the nuclear fuel, and for paying all taxes and costs arising out of the ownership, possession, or use of the fuel.

PG&E's lease payments include:

1. Basic Rent - a charge payable quarterly in arrears and calculated to represent the investment of Energy in the nuclear fuel consumed while the unit is producing heat and a daily financing charge for the period allocated to the unit, but excluding daily financing charges capitalized and added to investment;
2. Additional Rent - all other payments PG&E agrees to make, other than Basic Rent and Advance Rent; and
3. Advance Rent - which PG&E shall pay upon Energy's request in certain specified circumstances when Energy does not have sufficient funds and cannot obtain the funds from alternative sources and in amounts sufficient to allow Energy to meet its obligations.

PG&E retains the sole obligation regarding storage and distribution of spent fuel. Within a reasonable time after the leased nuclear fuel has become spent fuel, Energy shall transfer its right, title, and interest in the spent fuel to PG&E.

Additionally, at any time, and at its option, PG&E may cause Energy to transfer all or a part of Energy's right, title, and interest in nuclear fuel to PG&E.

Energy agrees, upon PG&E's request, to exercise its rights under the Credit Agreement to borrow funds to enable it to carry out its obligations under the Lease and, with certain exceptions, to consent to or join in any consent with respect to the nuclear fuel contracts.



At any time, PG&E may, upon five days' written and delivered notice, terminate the Lease. Energy may terminate the Lease under certain circumstances, including:

1. If it notifies PG&E that Energy is of the opinion that it faces potential liability arising out of Energy's interest in the nuclear fuel subject to the Lease, for which Energy is not fully insured, and this notice is not rescinded within 15 days;
 2. If it becomes subject to certain adverse interpretations, rules, regulations, or declarations with respect to its status or the conduct of its business; or
 3. If there is a nuclear incident of sufficient magnitude.
- Energy has alternative termination rights upon certain

events of default (Events of Default). These Events of Default include, among other matters:

1. The insolvency of PG&E;
2. The failure of PG&E to perform its payment or other obligations under the Lease, including specifically its obligations relating to insurance under Section 11 of the Lease; and
3. The failure by PG&E to pay any indebtedness for borrowed money exceeding an aggregate of \$10,000,000 when due, if such failure shall continue after any applicable grace period relating to the indebtedness.

To the extent the nuclear fuel being leased is, or becomes eligible: (a) for the work incentive credit; (b) for the investment credit; or (c) for the service credit under the Internal Revenue Code, at PG&E's request, Energy shall elect to treat PG&E as having acquired the nuclear fuel and shall provide PG&E with an appropriate credit election.

B. Increase in Available Credit Limit - PG&E is currently participating in negotiations to amend the documents related to the Lease to increase the credit limit available to Energy from \$300,000,000 to \$400,000,000 and to increase the amount which Energy is authorized to loan PG&E from \$150,000,000 to \$160,000,000. These documents consist of the Credit Agreement and Consent and Agreement attached to A.60046 as Exhibits D and F. The credit limit increases will be accomplished principally by amendments to the Credit Agreement under which Energy finances the purchases of nuclear fuel. Energy will enter into Amendment No. 1 to the Credit Agreement (Amended Credit Agreement) to increase the available credit limits. The Amended Credit Agreement will allow Energy to borrow from the Banks up to \$400,000,000 to finance (a) its purchase of up to \$400,000,000 of nuclear fuel to be leased to PG&E; or (b) its loan to PG&E of up to \$160,000,000, but not to exceed the amount of nuclear fuel being leased or 40% of the value of Energy's total assets when taken together with the value of other investment securities. Although PG&E's approval of the Amended Credit Agreement will be required, PG&E will not be a party to the amended Credit Agreement. Except for the credit limit changes to be negotiated in the Amended Credit Agreement, the document will remain similar in all material aspects to that executed in February 1981. The general

structure of the Credit Agreement is described in D.92555 and is discussed below. Amendment No. 1 to the Credit Agreement in substantially final form is attached to the application as Exhibit D.

To induce each of the Banks to enter the Credit Agreement and to enable Energy to finance its purchase of nuclear fuel for purposes of the Lease and its lending of certain funds in excess of those necessary for nuclear fuel to PG&E on a revolving credit basis, PG&E executed the Consent and Agreement. Attached in substantially final form as Exhibit F to the application is a revised Consent and Agreement to be executed by PG&E as an inducement for the Banks to enter the Amended Credit Agreement.

The Credit Agreement provides a method for Energy to finance its obligations under the Lease. Energy finances its purchases of the nuclear fuel leased to PG&E through issuance of its own commercial paper and/or through direct loans from certain banks. In accordance with the Credit Agreement executed by Energy and certain banks, attached to the amended A.60046 as revised Exhibit F, Energy's commercial paper will be supported by letters of credit extended severally by Manufacturers Hanover Trust Company, Bankers Trust Company, and the First National Bank of Chicago (collectively referred to as the Banks.) Commercial paper dealers acting as agents and/or dealers for Energy will place its commercial paper on the market.

Contingent upon satisfaction of certain conditions and the nonconcurrence of various events, including expiration or termination of the Credit Agreement or specified Events of Default, the original Credit Agreement committed the Banks to provide Energy financing of up to \$300,000,000 by letters of credit supporting the issuance of Energy's commercial paper and/or through direct loans to Energy on a revolving credit basis. The proceeds may be used by Energy, among other purposes, to purchase up to \$300,000,000 of nuclear fuel for purposes of the Lease, and to loan up to \$150,000,000 on a revolving credit basis to PG&E to be evidenced by the Promissory Note. While PG&E is not a party to the Credit Agreement, its consent to the Credit Agreement was a required pre-condition to the Banks' execution of it.

The Commission previously recognized certain advantages to leasing nuclear fuel in D.92555.^{1/} These benefits were alleged in PG&E's A.60046, as follows:

1. Nuclear fuel leasing provides PG&E an "off-balance sheet financing" method of procuring nuclear fuel. This financing method enables PG&E to obtain nuclear fuel exclusive of the cost of equity, without placing additional pressure on its traditional capital markets, and should result in a reduction of its costs to obtain nuclear fuel.

^{1/} Advantages to leasing nuclear fuel were also recognized by the Commission in Southern California Edison Company's decisions (D.93857 dated December 15, 1981 in A.60995; D.90380 dated June 5, 1979 in A.58791; and D.87961 dated October 12, 1977 in A.57379).

2. Leasing nuclear fuel, should reduce revenue requirements to the extent that an equity return component normally associated with the purchase of capital assets is not required from the rate-payers.

3. For financial reporting purposes, the Lease will continue to be accounted for on PG&E's books as a lease in accordance with the Statement of Financial Accounting Standards 13 of the Financial Accounting Standards Board which represents the present position of the accounting profession with regard to the proper accounting treatment for leases. PG&E currently report all leases in a balance sheet footnote under commitments and contingencies.

4. Owning nuclear fuel may have a disadvantageous effect on PG&E's cash flow because of the relatively short-term nature of the asset. With ownership, cash flow associated with depreciation must be continually reinvested in new fuel with rising fuel costs. This could cause continual cash flow deficits as required reinvestment exceeds burnup. Leasing enables these cash expenditures and accounting expenses to be in balance.

5. Leasing nuclear fuel means that the ratepayers will be charged only for the nuclear fuel being used and only when it is being used (plus financing charges).

1. Nuclear fuel leasing provides PG&E an "off-balance sheet financing" method of procuring nuclear fuel. This financing method enables PG&E to obtain nuclear fuel exclusive of the cost of equity, without placing additional pressure on the traditional capital markets, and should result in a reduction of its costs to obtain nuclear fuel.

Advantages to leasing nuclear fuel were also recognized by the Commission in Southern California Edison Company's decision (D.98857 dated December 12, 1981 in A.90922; D.90380 dated June 2, 1979 in A.87521; and D.87521 dated October 12, 1977 in A.27379).

In the application, PG&E states that the increase in the nuclear fuel subject to the Amended Credit Agreement will increase the annual amount of financing cost savings of up to \$27,600,000. The anticipated savings reflecting the \$400,000,000 nuclear fuel lease commitment are summarized in the application as follows:

Revenue Requirements

<u>Lease</u>	<u>Ownership</u>
--------------	------------------

Nuclear Fuel Lease

Commitment Financing Cost \$ 400,000,000 \$400,000,000

Rate of Return Effect 20.4%

(Pre-Tax)
 Lease a/ 13.5%
 Ownership b/ 20.4%

Annual Financing Cost \$ 54,000,000 \$ 81,600,000

Present Value of Financing

Costs 1/1/82 through 1/1/2031 c/ \$264,676,000 \$399,955,000

Includes: Commercial Papers (1/82) 13.0%
 Fee for Letters of Credit .5%
 Total 13.5%

b/ Based on weighted pretax costs in accordance with PG&E's capital costs and capitalization ratios in accordance with the 1982 rate case (D.93887 dated December 30, 1981 in A.60153). Energy would pass on to PG&E any available tax credits relating to the leased nuclear fuel.

c/ Discounted at 20.4%

The Commission's Revenue Requirements Division has reviewed the application and finds this transaction to be essentially similar to the prior nuclear fuel lease. The Division has no objection to granting PG&E authority to amend its Lease to increase the credit limit available to Energy from \$300,000,000 to \$400,000,000 nor does it object to PG&E's request to modify D.92555 to allow an increase in the amount of its Promissory Note from \$150,000,000 to \$160,000,000.

Findings of Fact

1. PG&E, a California corporation, operates as a public utility under the jurisdiction of this Commission.
2. The nuclear fuel lease may permit PG&E to acquire nuclear fuel for its Diablo Canyon facility at significantly less cost than would be required for outright purchase of the nuclear fuel.
3. The increase in the nuclear fuel subject to the Amended Credit Agreement to \$400,000,000 may increase the amount of financing cost savings and the amount of resultant revenue savings to PG&E and its ratepayers.
4. The money, property, or labor to be procured or paid for by the funds PG&E may obtain in borrowings under the Promissory Note is reasonably required for the purposes specified in the application.

4. This order shall become effective when PG&E pays the additional fee of \$5,000 set by PU Code Section 1904(b) for the \$10,000,000 increase in the maximum amount of the Promissory Note delivered to the Pacific Energy Trust. A public hearing is hereby ordered to be held at the City of San Francisco, California, on APR 21 1982.

in the order which follows.

O R D E R

JOHN E. BRYSON
President

RICHARD DODD GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CAEVO
PRISCILLA C. CREW

Commissioners effective this order, is authorized a modification of C.92252 dated December 30, 1980 in A.82048 (a) to contain a fee

Public Utilities Commission
STATE OF CALIFORNIA
APR 21 1982
0437/1
75000.00

Ordering Paragraph 3 of C.92252 is modified to authorize

CERTIFY THAT THIS DECISION WAS APPROVED BY THE COMMISSIONERS

Joseph E. ... Executive Director

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

Conclusions of Law

1. A public hearing is not necessary. The application should be granted to the extent set forth in the order which follows.

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, is authorized a modification of D.92555 dated December 30, 1980 in A.60046 (a) to continue to lease nuclear fuel in accordance with terms and conditions substantially consistent with those contained in the various documents attached to the application as Exhibits D, E, and F, as may be amended, and (b) to increase the credit limits available to Pacific Energy Trust from \$300,000,000 to \$400,000,000.

2. Ordering Paragraph 3 of D.92555 is modified to authorize PG&E, on or after the effective date of this order, to execute, deliver, and perform a Promissory Note in an amount up to \$160,000,000 aggregate principal amount, exempt from the Commission's competitive bidding rule, to the Pacific Energy Trust.

3. D.92555 shall remain in full force and effect except as modified by this order.