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Decision No. 92555 DEC 30 1980

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC COMPANY For Authorization To Enter A Nuclear Fuel Lease, To Borrow Funds From Its Nuclear Fuel Lessor And To Issue Promissory Notes Evidencing Such Debt, To Enter A Consent And Agreement Relating To The Nuclear Fuel Lease And To Its Borrowing Of Funds From Its Nuclear Fuel Lessor, And, Upon A Certain Termination Of A Trust Relating To The Nuclear Fuel Lease, To Assume Certain Obligations.	Application No. 60046 (Filed October 30, 1980; amended December 19, 1980)

O P I N I O N

Pacific Gas and Electric Company (PGandE) requests authority, pursuant to Sections 701, 816 through 818, 830 and 851 of the Public Utilities Code, for the following:

(1) To enter a Nuclear Fuel Lease with Pacific Energy Trust (Energy) through which PGandE would lease nuclear fuel;

(2) to borrow from Energy on a revolving credit basis an amount up to $150,000,000 but not to exceed an amount equal to Energy's investment in nuclear fuel then being leased and to issue a Promissory Note exempt from the Commission's competitive bidding rule, to Energy to evidence any such debt;

(3) to execute a Consent and Agreement with certain banks where such an agreement is a prerequisite to Energy's borrowing from the banks in an aggregate amount not to exceed $300,000,000 to finance:

(a) Energy's purchase of not to exceed $300,000,000 of nuclear fuel to be leased to PGandE; or

(b) Energy's loans to PGandE of up to $150,000,000, but not to exceed the amount of nuclear fuel then being leased; and

(4) to be authorized upon the termination of Energy, and upon certain conditions, to assume certain obligations and to succeed to certain rights.

On December 19, 1980, PGandE filed an amendment to its application. The amendment was necessitated by a modification of the Credit Agreement which increased Energy's authorized borrowings from Banks from $200,000,000 to $300,000,000. The amendment also sets forth the other changes to the basic transactions resulting from Energy's increased borrowing authorization. Energy is allowed to use the funds, obtained through the Credit Agreement to finance its purchase of up to $300,000,000 of nuclear fuel to be leased to PGandE or to finance its loans to PGandE of up to $150,000,000, but not to exceed the amount of nuclear fuel being leased. Additionally, Section 2(d) of the Lease has been modified to increase its limitation on the total nuclear fuel investment of Energy from $300,000,000 to $400,000,000.

Notice of the filing of the application appeared on the Commission's Daily Calendars of November 5 and December 23, 1980, respectively. No protests have been received.

PGandE is a California corporation and a public utility principally engaged in the business of generating, purchasing, transmitting, and selling electricity, and purchasing, transporting, distributing, and selling natural gas to 47 counties in Central and Northern California. PGandE also provides a small amount of incidental water and steam services. For the twelve months ended

September 30, 1980, PGandE reported total operating revenues of $4,643,168,000 and net income of $480,863,000. Exhibit A, attached to the application, indicates that for the nine months ended September 30, 1980, PGandE generated total operating revenues of $3,636,820,000 and net income of $401,393,000.

Exhibit I, attached to the application, indicates that PGandE's unreimbursed capital expenditures as of August 31, 1980, were $812,619,000. Since August 31, 1980, and up to the date of this application, PGandE received net proceeds in the amount of approximately $14,396,000 from the issuance and sale of common stock in connection with its Savings Fund Plan and Dividend Reinvestment and Common Stock Purchase Plan. PGandE has not been reimbursed for any other material portion of the unreimbursed capital expenditures since August 31, 1980. PGandE has made additional capital expenditures subsequent to August 31, 1980, which are not set forth in Exhibit I attached to the application.

PGandE intends to use the funds made available to it through Energy's revolving credit line to partially reimburse its treasury for capital expenditures.

The application indicates that by December 31, 1980, PGandE will have approximately $231 million in nuclear fuel inventory. PGandE presently finances its nuclear fuel inventory with permanent capital consisting of long-term debt, preferred and common equity.

PGandE is presently completing negotiations on a Nuclear Fuel Lease (Lease), a Promissory Note, and a Consent and Agreement (Consent), copies of which are attached to the amended application as revised Exhibits B, C, D, respectively.

The Lease provides that PGandE will lease nuclear fuel from Energy, a trust organized under the laws of the State of New York.[1/]

Energy will acquire from PGandE certain rights to nuclear fuel that is intended to be utilized in reactor cores of Diablo Canyon Nuclear Plant and will acquire from PGandE certain rights concerning nuclear fuel under contracts which PGandE has entered or may enter. Energy will purchase nuclear fuel or rights thereto under these contracts for purposes of the Lease.

Energy will finance its purchase of the nuclear fuel leased to PGandE through issuance of its own commercial paper and/or through direct loans from certain banks. In accordance with a Credit Agreement to be executed by Energy and certain banks, attached to the amended application as revised Exhibit F, Energy's commercial paper will be supported by letters of credit (Letters of Credit) extended severally by Manufacturers Hanover Trust Company (MHT), Bankers Trust Company(BT), and the First National Bank of Chicago (FNBC). (MHT, BT, and FNBC will be referred to collectively as the Banks.) Commercial paper dealers acting as agents and/or dealers for Energy will place its commercial paper on the market.

1/ The signatory to the Lease on behalf of Energy will be Newton I. Waldman, not in his individual capacity but solely as cotrustee (Cotrustee), acting under and pursuant to a Trust Agreement, a copy of which is attached to the amended application as revised Exhibit E. The Trust Agreement designates United States Trust Company of New York (Corporate Trustee), a New York banking corporation, as Energy's other cotrustee.

Contingent upon satisfaction of certain conditions and the nonoccurrence of various events, including expiration or termination of the Credit Agreement or specified events of default, the Credit Agreement commits 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 to, among other purposes, 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 PGandE to be evidenced by the Promissory Note. While PGandE is not a party to the Credit Agreement, its consent to the Credit Agreement is a required precondition to the Banks' execution of the Credit Agreement.

The Promissory Note, intended to evidence any such debt by PGandE to Energy, unconditionally obligates PGandE to pay Energy on a specified date[2/] the aggregate principal amount of the loans made by Energy to PGandE, which have not been repaid by PGandE. Interest on the aggregate unpaid principal amount shall be paid quarterly by PGandE to Energy in a manner and in an amount equal to the interest or discount accrued for each day during that quarter on that portion of Energy's borrowings from the Banks or through its issuance of commercial paper notes equal to the unpaid principal amount.

In order to induce the Banks to enter into the Credit Agreement, PGandE agrees in the Consent with each Bank (among other things):

(1) To make its payments as they become due under the Lease or under the Promissory Note to a collateral account (Collateral Account) to be established by the Security Agreement;

2/ Initially to be June 30, 1985, but with provisions for annual extensions paralleling similar provisions in the Credit Agreement.

(2) to perform and comply with each term and provision of the Lease;

(3) to repeat and to reaffirm for the benefit of the Banks the representations and warranties made by PGandE in the Lease:

(4) to make additional representations and warranties to the Banks; and,

(5) to regularly furnish certain financial and other information to the Banks as required.

An additional condition precedent to the effectiveness of the Credit Agreement is Energy's execution of the Security Agreement, a copy of which is attached to the amended application as revised Exhibit G. Under the Security Agreement, Energy pledges, assigns, transfers and delivers to MHT, as pledgee for the Banks and of holders of Energy's commercial paper, and subject to certain permitted liens, a continuing first priority security interest in specified collateral which Energy will own as of the date of execution of the Security Agreement, or at any time thereafter may acquire, such as:

(1) Any right, title, or interest in, including among other things, all nuclear fuel under the Lease;

(2) all of Energy's rights under the Lease, including the payment of lease payments by PGandE; and,

(3) all of Energy's rights under the Promissory Note, including all collections, income, and distributions with respect to the note.

While under the Security Agreement the rights of the Banks and of the holders of Energy's commercial paper are equal.

While PGandE is not a party to the Trust Agreement, that agreement's execution and effectiveness is also a condition precedent to the effectiveness of the Credit Agreement. The trust estate, defined in Schedule A to the Lease (Exhibit B) includes all rights of the Cotrustee and of the Corporate Trustee (or either of them) in the transactions related to the Lease, including among others: (a) in the Lease, (b) in the agreements to purchase nuclear fuel, and (c) in the Credit Agreement. The declaration of trust specifically subjects the Trust Agreement to the terms and conditions: (a) of the Lease, (b) the Credit Agreement, and (c) of the Security Agreement.

The trust may be terminated by the written notice of the trustor, provided that such termination shall not be effective without the written consent of the trustees and PGandE.

The more important provisions of the Nuclear Fuel Lease include:

(1) PGandE 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 PGandE for all amounts paid by PGandE and for the costs it incurred in obtaining these rights.

(4) PGandE 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, PGandE 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 PGandE 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.

PGandE's lease payments will 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 PGandE agrees to make, other than Basic Rent and Advance Rent; and

(3) Advance Rent - which PGandE shall pay upon Energy's request in certain specified circumstances when Energy does not have sufficient funds and cannot obtain such funds from alternative sources and in amounts sufficient to allow Energy to meet its obligations.

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

Energy agrees upon PGandE'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, PGandE may, upon five days' written and delivered notice, terminate the Lease. Energy may terminate the Lease under certain circumstances, including:

(1) If it notifies PGandE 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 sufficent magnitude.

Energy has alternative termination rights upon certain events of default (Event of Default). These Events of Default, include, among other matters:

(1) The insolvency of PGandE;

(2) the failure of PGandE 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 PGandE 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 PGandE's request, Energy shall elect to treat PGandE as having acquired the nuclear fuel and shall provide PGandE with an appropriate credit election.

The Commission has previously recognized certain advantages to leasing nuclear fuel[3/] and these benefits are alleged in PGandE's application, as follows:

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

3/ SoCal Edison Co., Decision No. 90380, dated June 5, 1979, in Application No. 58791 and Decision No. 87961, dated October 12, 1977, in Application No. 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 ratepayers.

(3) For financial reporting purposes, the Lease will continue to be accounted for on PGandE's books as a lease in accordance with the Statement of Financial and Accounting Standards No. 13 (FASB 13) 4/ of the Financial Accounting Standards Board which represents the present position of the accounting profession with regard to the proper accounting treatment for leases. PGandE currently reports all leases in a balance sheet footnote under commitments and contingencies.

(4) Owning nuclear fuel may have a disadvantageous effect on PGandE'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 burn up. 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 (burnup) and only when it is being used (plus financing charges).

In revised Exhibit H, attached to the amended application, PGandE has provided calculations establishing that by leasing nuclear fuel, PGandE expects to save annually in excess of 25 percent of the

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4/ FASB 13 issued in November 1976 defines a lease: "A lease is defined as an agreement for conveying the right to use property, plant or equipment (land and/or appreciable assets) usually for a stated period of time. It includes agreements that, although not nominally defined as leases, meet the above definition, such as a 'heat supply contract' for nuclear fuel."

financing expense which would be required by the utility's continued ownership of nuclear fuel. The calculation of these anticipated savings are summarized in the amended application as follows:

	Revenue Requirements[a]	
	Lease	Ownership
Nuclear Fuel Lease Commitment	$300,000	$300,000
Financing Cost - Rate of Return Effect (Pre-Tax) Lease	12.50%[b]	
Ownership		17.101%[c]
Annual Financing Cost	$ 37,500	$ 51,303
Present Value of Financing Costs 1/1/81 through 6/30/85 d/	$112,518	$152,566
Present Value Financing Costs 1/1/81 through 1/1/2031 d/	$219,204	$299,888

a/ Dollars stated in thousands.

b/ Includes: Commercial Paper - 12.00% (1980) and fee for Letters of Credit - .50%

c/ Based on weighted pretax costs in accordance with PGandE's capital costs and capitalization ratios. Decision No. 91107, dated December 19, 1979, in Applications Nos. 58545 and 58546. Energy would pass to PGandE any available investment tax credits relating to the leased nuclear fuel.

d/ Discounted at 17.101%.

PGandE requests that the Commission assert its jurisdiction over the lease pursuant to the general provisions of Section 701 of the Public Utilities Code. PGandE's request is nearly identical to that granted SoCal Edison in Decision No. 90380, dated June 5, 1979, in Application No. 58791. Section 701 of the Public Utilities Code grants the Commission broad power to do all things necessary and convenient in the exercise of its general power and jurisdiction to supervise and regulate public utilities and to keep rates reasonable. PGandE urges that it is in the best interests of the ratepayers of California that this Commission, which has general jurisdiction over and which regulates PGandE's rates and business, take jurisdiction over the Lease. The financial importance of the Lease and the essential nature of the leased material allegedly make the Lease a different type of transaction than any type of fuel acquisition or lease typically engaged in by a public utility.

Commission jurisdiction over the Lease is also requested because the Federal Energy Regulatory Commission (FERC) has allegedly exercised jurisdiction over similar nuclear fuel leases, where state commissions have declined to do so. The FERC's jurisdiction is premised on its authority over issuance of securities under Section 204(a) of the Federal Power Act. By labeling such leases as a form of security, the FERC negates a benefit of nuclear fuel leasing, that of keeping the transaction off the balance sheet. Thus PGandE urges that the Commission exercise its Section 701 jurisdiction over the Lease, thereby act to remove the possible jurisdiction of the FERC, and thereby preserve the financial benefit of the Lease.

Therefore, this Commission's jurisdiction over the Lease could be premised on its authority (a) to insure adequate fuel supply, (b) to maintain adequate electric service, and (c) to set reasonable rates insofar as leasing is less costly than ownership. PGandE has established that the Nuclear Fuel Lease may result in significant savings as compared to the cost of outright purchase of nuclear fuel.

With respect to PGandE's further requests that this Commission authorize its execution, delivery, and performance of the Promissory Note and of the Consent, authorize its transfer to Energy upon and at times after the execution of the Lease its right, title, and interest to its nuclear fuel inventory and to certain contracts concerning nuclear fuel which it has entered or may hereafter enter, and authorize its assumption of certain obligations and succession to certain benefits upon certain conditions upon termination of the Trust Agreement, we note first that the Revenue Requirements Division has reviewed the application and concluded that PGandE's obtaining funds through Energy's extension of credit of up to $150,000,000 on a revolving credit basis is necessary to partially reimburse PGandE's treasury for past capital expenditures.

The Credit Agreement provides Energy financing through the issuance and sale of its commercial paper, supported by irrevocable Letters of Credit issued by the Banks, and/or by direct loans from the Banks. The $300,000,000 commitment shall be divided among the Banks. Any extension of credit by the Banks to Energy shall be evidenced by either the Banks' consent to the issuance of a commercial paper note or by a credit note.

As a consideration to the Banks for their respective obligations respecting the Letter of Credit, Energy shall pay to each Bank a fee (Letters of Credit Fee) equal to the individual Bank's percentage of the total commitment to Energy times 1/2 of 1 percent per annum of an amount computed on a daily basis upon the greater of:

(1) The face amount of the then outstanding supported commercial paper notes or

(2) eighty percent of the Banks' total commitment.

As a consideration to the Banks for their respective obligations to make direct loans to Energy, Energy shall pay each Bank a fee (Commitment Fee) equal to the individual Bank's percentage of the total commitment to Energy times 1/8 of 1 percent per annum of an amount computed on the daily basis upon the lesser of:

(1) Twenty percent of the Banks' total commitment or

(2) the Banks' total commitment minus the aggregate amount of the Banks' total commitment, not then being used by Energy to purchase nuclear fuel and/or to make loans to PGandE.

PGandE intends to fully utilize the $300,000,000 commitment of the Banks and therefore Energy, and effectively PGandE, will not incur such a Commitment Fee.

With certain limitations, Energy is permitted to obtain an additional $100,000,000 of financing independent of the Credit Agreement and use such funds to purchase nuclear fuel for purposes of the Lease or to pay the costs associated with its obtaining this additional financing.

With certain specified exceptions, Energy may use the proceeds of the Credit Agreement for the following purposes:

(1) Purchase nuclear fuel pursuant to the Lease;

(2) loan PGandE up to $150,000,000 in an amount not to exceed the amount of nuclear fuel then being leased to be evidenced by the Promissory Note;

(3) issue supported commercial paper notes for the purpose of one of the other approved purposes;

(4) make payments on outstanding, matured commercial paper notes;

(5) pay principal and interest on any outstanding credit note;

(6) pay financing costs; and

(7) purchase designated securities.

The Credit Agreement limits the amount of Energy's loans to PGandE at any one time to the amount of Energy's net investment in the nuclear fuel then being leased. The Credit Agreement shall be governed by, construed and interpreted in accordance with the laws of New York.

With certain exceptions, the rate of interest on the unpaid principal amount of Energy's debt to the Banks set forth on the credit note shall be:

(1) During the first 90 days equal to the then effective MHT Rate; 6/

(2) thereafter, equal to the then effective MHT Rate, unless for a particular period there has been outstanding any unpaid principal amount on a credit note; and

(3) in that event, the interest shall be equal to 105 percent (105%) of the then effective MHT Rate.

6/ The Credit Agreement defines the MHT Rate as the commercial loan rate of MHT from time to time in effect in New York, New York, on unsecured borrowings having a 90-day maturity by its most responsible and substantial domestic corporate borrowers.

If any principal on a credit note is not paid when due, interest on such principal shall thereafter be payable, until such overdue amount is paid in full, at an annual rate 2 percent greater than the rate otherwise applicable.

Among other matters, conditions precedent to the effectiveness of the Credit Agreement include an order of this Commission authorizing PGandE to execute the Lease, to execute the Promissory Note, and to execute the Consent and the execution of the Lease, the Promissory Note, the Consent, and the Trust Agreement.

To induce each of the Banks to enter the Credit Agreement and to thereby enable Energy to finance its purchase of nuclear fuel purchase for purposes of the Lease and its lending of certain funds in excess of those necessary for nuclear fuel to PGandE on a revolving credit basis, PGandE will execute the Consent and therein agree directly with each Bank the following:

(1) It will perform its payment and other obligations under the Lease and make all such payments to the Collateral Account;

(2) it repeats and reaffirms for the benefit of the Banks the warranties and representations it made to Energy in the Lease and makes further representations and warranties to the Banks;

(3) it will regularly provide each Bank with certain designated financial and other information;

(4) it confirms that each reference in the Lease to "assignees" includes the Banks, and specifically confirms that each Bank is an indemnitee under the Lease, entitled to the benefits of indemnities set forth in Section 11 therein;

(5) it agrees that its required payments to the Collateral Account shall be made without its asserting any defense, claim, set-off, recoupment, abatement or other right, it may have against any entity (excepting the defense that PGandE has already made the required payment and the defense that the loan purported to be evidenced by the Promissory Note was not in fact made);

(6) it confirms that certain "obligations" referenced at specified places in the Lease include obligations other than those incurred for the purchase of nuclear fuel; and

(7) it agrees that any request by the pledgee for Advance Rent as provided in the Lease, notwithstanding any other section of the Lease, shall be in the form set forth in an appendix to the Consent.

PGandE alleges that the Credit Agreement enables Energy to be sufficiently financed to obtain an adequate nuclear fuel inventory to service PGandE's nuclear fuel needs and to have funds in excess of that necessary to obtain nuclear fuel to loan PGandE up to $150,000,000 in an amount not to exeeed the amount of nuclear fuel being leased. By combining these objectives in the Credit Agreement, it is alleged that Energy is able to finance its needs under the Lease at attractive rates and pay a lesser amount in fees and other charges than would otherwise have been available. The full amount of these cost savings will be passed onto PGandE, and ultimately to its ratepayers.

PGandE alleges that these transactions enable it to obtain its nuclear fuel at a lower net cost than would be available by direct ownership and also obtain credit up to $150,000,000 on a revolving basis, with maximum flexibility and at advantageous commercial paper discounts or interest rates. The commercial paper discounts and the interest rates payable are fluctuating. The discount rate is tied to the market rate and the interest rate is tied to the MHT Rate. Due to the structure and relationship among the agreements discussed herein, PGandE (a) must execute the Lease with Energy; (b) must upon and at times after the execution of the Lease 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 hereafter enter; (c) must execute the Promissory Note to Energy; (d) must execute the Consent to the Banks; ✓ (e) must assume certain obligations; and (f) must succeed to certain rights under the Trust Agreement upon a particular termination of the trust.

In these circumstances, PGandE requests that the Promissory Note be exempt from the Commission's competitive bidding requirements.[7/] It contends that application of the competitive bidding rule to its execution of the Promissory Note would not be in the best interests of PGandE or its ratepayers as it could effectively preclude PGandE from taking advantage of the lower cost, favorable commercial paper discounts, interest rates, and flexible financing available through the Lease and its related transactions. Accordingly, the Commission's competitive bidding rule will not be applied to the Promissory Note.

PGandE acknowledges that the expenses it incurs in procuring nuclear fuel through this Lease will be subject to review in future rate proceedings, and cites this fact and the completeness of its application as warranting ex parte processing. The Commission states unequivocally that its acceptance of jurisdiction over, and its approval of, PGandE's entry into the Lease and its authorization to PGandE to execute, deliver and perform the Promissory Note and the Consent, its authorization to PGandE upon and at times after the execution of the Lease to 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 hereafter enter, and its authorization for PGandE to assume certain obligations and succeed to certain rights upon a particular termination of the trust are intended solely to facilitate PGandE's participation in these transactions and to enable it to fully consummate these transactions with the other entities, and do not indicate any judgment by the Commission as to the prudence of PGandE's participation in such transactions.

The staff of the Commission's Revenue Requirements Division has reviewed the application and has no objection to the execution, delivery, and performance of the Lease by PGandE. The Division has analyzed the Lease and has concluded that the Lease is a true lease

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7/ Decision No. 38614, dated January 15, 1946, as amended, in Case No. 4761.

and is not a commitment or guarantee of indebtedness. The Division has no objection to the execution, deliver, and performance of the Lease or to the execution and delivery of the Promissory Note by PGandE.

Findings of Fact

1. PGandE is a California corporation operating under the jurisdiction of this Commission.

2. The Lease is a true lease and involves no commitment by PGandE as guarantor or issuer of indebtedness within the meaning of Sections 816, 817, 818, and 830 or 851 of the Public Utilities Code.

3. The Lease may permit PGandE to acquire nuclear fuel at significantly less cost than would be required for outright purchase of such fuel.

4. PGandE's execution, delivery and performance of the Promissory Note and of the Consent and Agreement, its transfer to Energy upon and at times after the execution of the Lease, its right, title, and interest to its nuclear fuel inventory and to certain contracts concerning nuclear fuel which it has entered or may hereafter enter, and its assumption of certain obligations and succession to certain benefits upon certain conditions upon termination of the trust are for proper purposes.

5. PGandE has need for funds for the purpose set forth in the application.

6. The money, property or labor to be procured or paid for by the funds PGandE may obtain in executing the Promissory Note, and its borrowings thereunder, are reasonably required for the purpose specified herein, which purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income.

7. There is no known opposition and no reason to delay granting the authorizations requested herein.

Conclusions of Law

1. Section 701 of the Public Utilities Code grants this Commission jurisdiction over PGandE's Lease and to approve the Nuclear Fuel Lease.

2. This Commission has jurisdiction over the Promissory Note, over the Consent and Agreement, and over the Trust Agreement and jurisdiction to approve the Promissory Note, to approve the Consent and Agreement, to authorize PGandE to transfer to Energy upon and at times after the execution of the Lease its right, title, and interest to its nuclear fuel inventory and to certain contracts concerning nuclear fuel which it has entered or may hereafter enter, and to authorize PGandE to assume certain obligations and to succeed to certain benefits, as provided for in the Trust Agreement, upon termination of the trust under certain conditions.

3. A public hearing is not necessary.

4. Sufficient grounds exist to exempt PGandE's execution, delivery, and performance of the Promissory Note from the competitive bidding rule established in Decision No. 38614, dated January 15, 1946 as amended, in Case No. 4761 and such execution, delivery, and performance of the Promissory Note is exempted from the competitive bidding rule.

5. The amended application should be granted to the extent set forth in the order which follows.

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

The actions taken herein are for the purpose of this proceeding only and are not to be construed as indicative of the amount of expenditures, if any, under the Lease which shall be approved as proper operating expenses in current or subsequent proceedings for the determination of just and reasonable rates. These authorizations should not be construed as indicative of the treatment which the Commission will accord to nuclear fuel acquisition arrangements to be undertaken by PGandE or other utilities with respect to other nuclear generating facilities.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company, on or after the effective date hereof, is authorized to lease nuclear fuel in accordance with the terms and provisions consistent with the Nuclear Fuel Lease attached to the amended application as revised Exhibit B.

2. Pacific Gas and Electric Company, upon and at times after the execution of the Lease, is authorized to 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 enter.

3. Pacific Gas and Electric Company, on or after the effective date hereof, is authorized to execute, deliver and perform a promissory note in an amount not to exceed $150,000,000, exempt from the Commission's competitive bidding rule, to Pacific Energy Trust in accordance with the terms and provisions consistent with the Promissory Note attached to the amended application as revised Exhibit C.

4. Pacific Gas and Electric Company, on or after the effective date hereof, is authorized to execute and deliver to Manufacturers Hanover Trust Company, Bankers Trust Company and the First National Bank of Chicago, a consent and agreement in accordance with the terms and provisions consistent with the Consent and Agreement attached to the revised application as revised Exhibit D.

5. Pacific Gas and Electric Company, on or after the effective date hereof, is authorized upon the termination of the trust, and, upon certain conditions, to assume certain obligations and to succeed to certain benefits under the Trust Agreement attached to the amended application as revised Exhibit E.

6. This order shall become effective when Pacific Gas and Electric Company has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is $81,000.

Dated DEC 30 1980, at San Francisco, California.

John E. Bryson
President

Richard D. Gravelle

Claire T. Dedrick

Leonard M. Grimes, Jr.
Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA
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By