

CACD/RHG

Decision 95-09-019 September 7, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
PACIFIC GAS AND ELECTRIC COMPANY U-39-M, )  
requesting approval of a proposed )  
Investment Manager Agreement with )  
PanAgora Asset Management, Inc. )

Application 95-06-049  
(Filed June 22, 1995)

**ORIGINAL**

O P I N I O N

Summary of Decision

This decision grants the authority requested by Pacific Gas and Electric Company (PG&E) in Application (A.) 95-06-049 (Application).

PG&E requests authority, pursuant to § 701 of the Public Utilities (PU) Code, the Commission's Rules of Practice and Procedure, and prior decisions, orders and resolutions of the Commission and specifically Decision (D.) 87-05-062 and Resolution (Res.) E-3071, for the following:

1. The proposed Qualified Investment Manager Agreement between PG&E's Nuclear Facilities Decommissioning Master Trust Committee (Committee) and PanAgora Asset Management, Inc. (PanAgora);
2. The proposed amendments of PG&E's Qualified and Nonqualified Nuclear Facilities Master Trust Agreements (Trust Agreements) to accommodate international equity investments;
3. The Executive Director or some other designee to sign the Qualified Investment Manager Agreement and trust amendments on behalf of the Commission.

PG&E states that PanAgora is a large international index fund manager, managing approximately \$4 billion in U.S. and international assets, including \$800 million of nuclear decommissioning trust assets. The use of an indexing approach will assure PG&E a long-term return approximately equal to that of the equity market represented by the indexes. Additionally, the account will utilize a tax management strategy, consistent with approximating the return of the indexes.

According to PG&E, equivalent tax management expertise was either not offered by other competing index fund managers, or was offered only at a higher management fee.

Notice of the filing appeared on the Commission's Daily Calendar of July 12, 1995. 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 D.87-05-062, the Commission adopted an externally managed trust fund as the vehicle for accruing funds for the ultimate decommissioning of the nuclear power plants. In that decision, the Commission also established guidelines for the Trust Agreements and required Commission approval for all subsequent amendments to the Trust Agreements.

In response to D.87-05-062, PG&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, PG&E's trusts

were approved by the Commission<sup>1</sup>, and executed shortly thereafter.

The Qualified Trust fund investments are limited by Internal Revenue Service tax regulations to (a) public debt securities of the United States; (b) obligations of a state or local government that are not in default as to principal or interest; and (c) time or demand deposits in a bank or an insured federal credit union. The Nonqualified Trust funds may be invested in any permitted investment for tax-qualified trust funds plus guaranteed investment contracts, high-quality corporate bonds and equity securities, and other securities guaranteed or secured by the U.S. government; provided that investments in high-quality equity securities do not exceed 60% of the trust fund's fair market value<sup>2</sup>.

In relevant part, both trusts provide for the establishment of the Committee consisting of five members, at least three of whom cannot be employees, officers, directors, or agents of the company. 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. Both the Qualified and Nonqualified Trusts provide that they may be amended by Commission order. Res. E-3071 approved the appointment of M.D. Sass Investors Services to act as investment manager on behalf of PG&E's trust funds and required that all subsequent proposed investment management or advisory agreements shall require Commission approval.

In an Interim Opinion related to requests by PG&E and other utilities to modify D.87-05-062 to permit, among other things, additional investment options for decommissioning trust funds, the Commission permitted up to 50% of the fair market value of the Qualified Trust funds to be invested in publicly traded

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<sup>1</sup> Res. E-3048, November 25, 1987.

<sup>2</sup> D.87-05-062, 24 CPUC 2d 302,319, Conclusions of Law 5 & 6.

equity securities, 40% of which may be invested in non-U.S. equity securities<sup>3</sup>.

In D.95-07-055 dated July 24, 1995, the Commission authorized new guidelines and specified among others, the authorized limits on investment of the trust funds:

- a. Not more than 50% of the fair market value of the qualified trusts may be invested in equity securities.
- b. Not more than 20% of the fair market value of the trusts may be invested in international equity securities.
- c. Up to 100% of the fair market values of the trusts may be invested in investment grade fixed-income securities (rated BBB- or higher by Standard & Poor's or an equivalent rating by other rating agencies) including, but not limited to government, agency, municipal, corporate, mortgage-backed, asset-backed, nondollar, and cash equivalent securities. The amounts and percentage invested in each of the above investment grade securities shall be reported by the utilities in their annual trust reports to the Commission. No derivative security of any kind shall be considered an investment grade fixed-income security.

We note herein that D.95-07-055 made no adjustment on the equity investment portion of the Nonqualified Trust.

Request for Order Approving Investment Manager Agreements

By this Application, PG&E is requesting Commission approval of the Investment Manager Agreement with PanAgora, shown as Exhibit A to the Application, so the trusts may commence international equity investments within the levels authorized by the Commission. PG&E is also requesting corresponding amendments

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<sup>3</sup> D.94-11-028, November 9, 1994, Ordering Paragraph 1, pp.2,3.

to its Trust Agreements, as shown in Exhibits B & C to the Application, to accommodate such international investments.

The Qualified Trust Agreement provides, "The Committee may appoint one or more investment managers to direct the investment of all or a part of the Master Trust."<sup>4</sup> "Investment managers" are defined as the fiduciaries who have been retained by the Committee to manage, acquire or dispose of trust assets.<sup>5</sup>

The Trust Agreements contemplate the execution of an agreement with each investment manager selected to direct the investment of trust assets. These agreements 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."<sup>6</sup> In this connection, the Commission in D.87-05-062 and Res. E-3071 explicitly required its approval of all Investment Manager Agreements.

By resolution dated May 26, 1994, shown as Exhibit D to the Application, the Committee approved the PanAgora appointment for the specific purpose of managing the international portion of the Qualified Trust.

In accordance with applicable Commission decisions and resolutions, PG&E requests that the Commission approve the proposed Investment Manager Agreement, the amendment of the Trust Agreements, and authorize the Executive Director or some other designee to sign the documents on behalf of the Commission.

The Commission Advisory and Compliance Division (CACD) has reviewed the proposed Investment Manager Agreement and finding it in accordance with the terms of the Trust Agreements and applicable Commission decisions and resolutions, recommends approval. CACD further recommends approval of the proposed

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4 Qualified Trust Agreement, p.35.

5 Qualified Trust Agreement, p.7.

6 Qualified Trust Agreement, p.9.

amendment of the Trust Agreements to accommodate international equity investment.

We concur and will approve PanAgora to handle the international equity portion of PG&E's trusts.

Request for Ex Parte Relief

The issues in the Application relate to the approval by the Commission of the proposed Investment Manager Agreement with PanAgora and corresponding Trust Agreement amendments primarily to accommodate international investments. The Commission has already authorized international equity investments.

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

We will grant PG&E's request. Ex parte treatment of the Application will have no adverse impact on the public interest because, as the Commission has already determined in Res. E-3069, the Trust Agreements and the Investment Manager 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 safeguards to preserve the assets of the trust funds and maximize the earnings on allowable investments.

Findings of Fact

1. PG&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 provides that Nonqualified Trust funds may be invested in high-quality equity securities provided that the investments shall not exceed 60% of the trust fund's fair market value.

4. D.87-05-062 required PG&E to obtain the Commission's approval prior to executing the Trust Agreements for its nuclear generating stations and required Commission approval for all subsequent amendments to the Trust Agreements.

5. D.95-07-055 authorized new guidelines and set limits on investment of the trust funds: not more than 50% of the fair market value of the Qualified Trust may be invested in equity securities; not more than 20% of the fair market value of the trusts may be invested in international equity securities.

6. In this Application, PG&E requests approval of the Investment Manager Agreement between the Committee and PanAgora for international equity investments within the levels authorized by the Commission.

7. In this Application, PG&E also requests approval of the corresponding amendments to its Trust Agreements to accommodate the international investments.

8. In support of this Application, PG&E has submitted sufficient information and materials that demonstrate PanAgora's qualifications and the propriety of the proposed agreements.

9. The proposed agreements are in compliance with the requirements of applicable Commission decisions and resolutions.

10. The proposed agreements provide adequate requirements that PanAgora, as Investment Manager, 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 Application and no reason to delay granting the approval requested.

#### Conclusions of Law

1. The Application is made pursuant to § 701 of the PU Code, the Commission's Rules of Practice and Procedure, and prior decisions, orders and resolutions of the Commission.

2. A public hearing is not necessary.

A.95-06-049 CACD/RHG\*

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

4. This order should be effective immediately.

ORDER

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) is granted authority to execute the Qualified Nuclear Decommissioning Investment Management Agreement (Investment Manager Agreement) between the Nuclear Facilities Decommissioning Master Trust Committee and PanAgora Asset Management in accordance with and as contemplated in Application 95-06-049.

2. PG&E's amendments of its Qualified and Nonqualified Nuclear Facilities Master Trust Agreements (Trust Agreements) to accommodate international equity investments are approved.

3. PG&E shall comply with the new guidelines set forth in Decision 95-07-055.



A.95-06-049 CACD/RHG\*

4. The Executive Director or his designee is directed to sign the Investment Manager Agreement and Trust Agreements on behalf of the Commission.

This order is effective today.

Dated September 7, 1995, at Los Angeles, California.

DANIEL Wm. FESSLER  
President  
P. GREGORY CONLON  
JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE  
Commissioners

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

*Wesley Franklin*  
Acting Executive Director