

CACD/RHG

Decision 95-09-023 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,)
(1) to issue, sell and deliver one or)
more series of its First and Refunding)
Mortgage Bonds, debentures, subordinated)
deferrable interest debentures,)
promissory notes and/or other evidences)
of indebtedness in connection with)
domestic or Euro-market offerings, to)
guarantee the obligations of others in)
respect of the issuance of securities)
and to arrange for standby letters of)
credit as performance guarantees, the)
total aggregate principal amount of such)
issuances and guarantees not to exceed)
\$400,000,000; (2) to issue shares of its)
Common Stock upon conversion of)
convertible debt securities or the)
exercise of equity warrants; (3) to)
enter into one or more interest rate)
caps, collars and swaps; and (4) for an)
exemption from the Competitive Bidding)
Rule.)

ORIGINAL

Application 95-06-060
(Filed June 30, 1995)

O P I N I O N

Summary of Decision

This decision grants Pacific Gas and Electric Company (PG&E) the authority requested in Application 95-06-060 (Application).

PG&E requests authority, under Public Utilities (PU) Code §§ 701, 701.5, and 816 through 830 for the following:

1. a. To issue, sell, and deliver, in one or more series, PG&E's First and Refunding Mortgage Bonds (Bonds), debentures, convertible debentures, debentures with warrants, subordinated deferrable interest debentures (commonly known as Quarterly Income Debt Securities (QUIDS) and Monthly Income Debt Securities (MIDS)), promissory notes and/or

other evidences of indebtedness and to enter into direct loans from banks, insurance companies or other financial institutions (to be collectively referred to as Debt Securities);

b. to unconditionally guarantee or otherwise secure the obligations issued by, or on behalf of, the State of California or any political subdivision, including but not limited to the California Pollution Control Financing Authority (to be collectively referred to as the Authorities or individually as the Authority), the proceeds of which are to be used to finance or refinance air and water pollution control features, sewage systems, solid waste disposal facilities, any other facilities qualifying for tax-exempt financing under the Internal Revenue Code or any combination thereof (to be collectively referred to as the Qualified Facilities);

c. to arrange for standby letters of credit with terms longer than one year to guarantee PG&E's performance of certain obligations; and/or

d. to guarantee or otherwise secure, through one or more agreements to such effect, the deferrable obligations and securities, commonly known as Quarterly Income Preferred Securities (QUIPS) and Monthly Income Preferred Securities (MIPS), issued by special purpose vehicles (SPVs), formed for the purpose of effectuating the financing, the proceeds of which are to be loaned to PG&E, and for exemption from the Commission's Competitive Bidding Rule for issuances of QUIDS/MIDS, QUIPS/MIPS or other subordinated deferrable interest debentures (to be collectively referred to as Deferrable Interest Securities). The total aggregate principal amount of these issues and/or guarantees shall not exceed the aggregate principal amount of \$400,000,000;

2. To enter into one or more interest rate caps, collars or swap agreements (Swaps) from time to time without the necessity for prior consent from the Commission, pursuant to PU Code § 701, and for exemption from the Commission's Competitive Bidding Rule for interest rate caps, collars, Swaps, and Debt Securities issued in connection with interest rate caps, collars or Swaps;

3. To issue, sell and deliver such Debt Securities under the Commission's Competitive Bidding Rule with the following modifications:
 - a. exemption therefrom for debt issues of \$300,000,000 principal amount or greater;
 - b. exemption therefrom for the issuance of notes on a continuous or periodic basis through dealers on a best-efforts or agency basis;
 - c. exemption therefrom for private placements with, or loans from, banks, insurance companies or other financial institutions, and for the arrangement of standby letters of credit with terms longer than one year used to guarantee PG&E's performance or payment, and for the issuance of Authority bonds and letters of credit;
 - d. exemption therefrom for issuances of Deferrable Interest Securities;
 - e. the elimination of the one-day notification requirement specified in the Competitive Bidding Rule; and
 - f. modification of the Competitive Bidding Rule to permit the use of the bidding procedures as described in the Application;
4. To issue shares of PG&E's Common Stock, \$5 par value (Common Stock):
 - a. in exchange for and upon retirement of the Debt Securities in any proposed series of convertible securities and upon conversion of these Debt Securities; or
 - b. in exchange for equity warrants upon exercise of these warrants, as may be required from time to time for any purpose under the provisions set forth, or to be set forth, in the certificates evidencing the Debt Securities and/or indenture(s) and other documents relating thereto under which the Debt Securities will be issued;
5. To be relieved of the necessity of complying with the Commission's General Order (G.O.) Series 24-B for the issuance of Medium-Term Notes (MTNs) and standby letters of credit and, in lieu of this requirement, to file such reports as described in the Application;

6. To use the net proceeds (exclusive of accrued interest) to be derived through the proposed sale of securities, as requested in PG&E's Application, for the purposes set forth in the Application; and
7. To use any accrued interest received in connection with the issue or issues of Debt Securities for general corporate purposes.

Notice of the filing of the Application appeared on the Commission's Daily Calendar of July 17, 1995. No protests have been received.

Background

PG&E, a California corporation, operates as a public utility subject to the jurisdiction of this Commission. PG&E generates, purchases, transmits and sells electricity, and purchases, transports, distributes and sells natural gas to 48 counties in Central and Northern California.

PG&E is authorized under its Articles of Incorporation to issue 800,000,000 shares of Common Stock, par value \$5 per share, 75,000,000 shares of First Preferred Stock, par value \$25 per share, and 10,000,000 shares of \$100 First Preferred Stock, par value \$100 per share. As of December 31, 1994, PG&E had outstanding 430,242,687 shares of Common Stock, 34,819,783 shares of First Preferred Stock and 0 shares of \$100 First Preferred Stock as shown in Exhibit A to the Application.

For the twelve months ended December 31, 1994, PG&E reported that it generated total utility operating income of \$10,023,455,000 and net utility operating income of \$1,613,309,000 as shown in Exhibit A to the Application.

Also shown as part of Exhibit A is PG&E's balance sheet as of December 31, 1994, summarized as follows:

(In Thousands)	
<u>Assets and Other Debits</u>	<u>Amount</u>
Net Utility plant	\$18,481,153
Gas Stored Underground - Noncurrent	45,983
Other Property and Investments	2,067,864
Current and Accrued Assets	1,880,288
Deferred debits	4,701,538
Total Assets/Other Debits	\$27,176,826
<u>Liabilities and Other Credits</u>	<u>Amount</u>
Common Equity	\$ 8,635,025
Preferred Stock	870,495
Long-Term Debt	8,336,990
Other Noncurrent Liabilities	1,022,740
Current and Accrued Liabilities	2,456,899
Deferred Credits	5,854,677
Total Liabilities/Other Credits	\$27,176,826

As of December 31, 1994, PG&E's construction expenditures unreimbursed from the sale of securities amounted to \$15,037,370,000, as shown in Exhibit D attached to the Application.

Debt Securities

PG&E seeks authority for the issuance or arrangement of Debt Securities, unconditional guarantees, letters of credit and guarantees in connection with Deferrable Interest Securities not to exceed the aggregate principal amount of \$400,000,000.

PG&E proposes to issue any of the following Debt Securities (with features to improve terms and conditions), which are described in detail on pages 12 to 24 of the Application:

1. Secured debt offerings (Bonds)
2. Unsecured debt offerings (debentures or notes)
3. Convertible notes
4. Notes with warrants
5. MTNs
6. Debt Securities issues in foreign-denominated currency
7. Direct loans
8. Tax-exempt financings of certain Qualified Facilities
9. Letters of credit
10. Deferrable Interest Securities

PG&E states that the terms and conditions of the proposed Debt Securities, including the price, interest rate, maturity date, redemption provisions, sinking fund (if any) and other provisions will be determined by market conditions at the time of sale of each series of the Debt Securities.

PG&E anticipates using the tax-exempt option in connection with the financing of its Qualified Facilities. PG&E's proposed financing structure with an Authority is described in detail on pages 18 and 19 of the Application. The proceeds from this type of debt will be used to finance or refinance air and water pollution control facilities, sewage systems, solid waste disposal facilities, and any other facilities qualifying for tax-exempt financing or any combination thereof.

Under certain market conditions, interest rate savings are possible through the issuance of notes with attached warrants. One type of warrant entitles the bearer to purchase an additional note during a period not to exceed the nonredemption period for the original note. The additional note would pay an interest rate less than the coupon interest rate on the original note. Investors are willing to accept this lower than current market yield in exchange for the option to purchase an additional note with a predetermined interest rate. A second type of warrant is called an equity warrant that entitles the bearer to purchase shares of PG&E Common Stock, \$5 Par Value, at a price per share to be set at the time of the Note offering.

PG&E anticipates that MTNs will be sold on a best-efforts or agency basis (with the dealer managers not taking underwriting risk) or through direct placements which will result in a lower issuance costs than traditional underwritten offerings. MTNs can be tailored to an investor's specific needs so as to achieve the lowest cost of funds.

Opportunities for additional interest rate savings may also exist through issuing Debt Securities denominated in the currency of a foreign country. Exposure to fluctuations in the value of the dollar, in relation to the debt obligation in the foreign-denominated currency, would be minimized by one or more forward contracts to purchase the currency or an independent

exchange of payment obligations with another party in a dollar-denominated currency.

Standby letters of credit guarantee PG&E's performance or payment of certain obligations. PG&E believes that under some circumstances, it may be able to secure more attractive pricing from the commercial banks which issue the letters of credit, or to enhance its flexibility in providing such performance or payment guarantees for projects such as large construction projects where performance such as environmental mitigation must be ensured for a period extending beyond one year, if it can enter into multi-year letters of credit. PG&E proposes to include information regarding standby letters of credit longer than one year in its existing quarterly statements submitted to the Commission in lieu of reports under General Order (G.O.) Series 24-B.

As part of the \$400,000,000 authorization sought in the Application, PG&E seeks authority (1) to engage in one or more financings to guarantee or otherwise secure the deferrable interest obligations and securities, such as QUIPS and MIPS, issued by one or more SPVs, the proceeds of which obligations and securities are to be loaned to PG&E, or (2) to issue, sell and deliver subordinated deferrable interest debentures, such as QUIDS and MIDS, directly to investors.

In discussions with the Commission Advisory and Compliance Division (CACD) and by letter dated August 7, 1995, PG&E clarified that the Deferrable Interest Securities financings will typically be structured in a manner such that PG&E would also be responsible for any incidental expenses, costs or liabilities that may be incurred by the SPVs, however unlikely the case may be given that the SPVs would be precluded from engaging in non-QUIPS/MIPS related activities.

PG&E proposes that the Deferrable Interest Securities would be sold publicly and would be issued in accordance with an indenture. In the case of a QUIDS/MIDS offering, PG&E proposes that the indenture would be between PG&E and a trustee for the QUIDS/MIDS holders, and that in the case of a QUIPS/MIPS offering, between PG&E and a trustee for a SPV. The indenture would set forth the aggregate principal amount, maturity, events of default

and other material provisions of the securities. PG&E states that it will effect any necessary registration of the Deferrable Interest Securities under federal securities laws which may be required before PG&E can deliver the Deferrable Interest Securities.

PG&E states that the proposed financings of Deferrable Interest Securities may be structured as follows:

1. Under the QUIPS or MIPS structure, PG&E would create one or more SPVs in the form of a limited partnership, a limited liability company or a business trust for the purpose of issuing the QUIPS/MIPS to investors. The QUIPS/MIPS would be issued by one or more SPVs and would be partially guaranteed by PG&E. The guarantee would cover any accrued and unpaid distributions declared on the QUIPS/MIPS by the SPVs and the liquidation value of the QUIPS/MIPS. The SPVs would lend the proceeds of the QUIPS/MIPS issuances to PG&E and in exchange, PG&E would issue to the SPVs subordinated interest deferrable debentures or another form of indebtedness which would fund the payments of principal and accrued interest on the QUIPS/MIPS. PG&E would enter into agreements to pay, guarantee or otherwise secure all costs, expenses and liabilities of the SPVs. Both the SPVs' loan to PG&E and the QUIPS/MIPS would contain a deferral feature that would allow PG&E to defer interest payments and the SPVs to defer distributions to the investors for a period of time, usually up to 60 months.

Under certain conditions, at the option of PG&E, the SPVs could be dissolved with the result that the subordinated interest deferrable debentures issued to them by PG&E would be distributed to the investors in the SPVs' securities. The subordinated deferrable interest debentures so distributed would have a principal amount equal to the aggregate stated liquidation amount of, and an interest rate identical to, the QUIPS/MIPS, including accrued but unpaid interest.

2. Instead of issuing QUIPS/MIPS through SPVs, under the QUIDS or MIDS structure, PG&E would directly issue QUIDS, MIDS or other subordinated deferrable interest debentures directly to investors without the use of SPVs. The QUIDS and MIDS would be debt instruments and would have interest deferrable features similar to the QUIPS and MIPS.

PG&E states that as a result of the deferral feature and other subordinated debt characteristics, and based on recent QUIDS/MIDS financings by other issuers, PG&E anticipates that rating agencies will consider QUIDS/MIDS to be similar to preferred equity for capital structure purposes. PG&E also anticipates that there will be additional QUIDS/MIDS offerings in the near future which should yield more information on expected rating agency treatment of these securities. PG&E states that it expects to obtain an opinion from tax counsel that the interest on the QUIDS/MIDS structure, will be classified as tax-deductible interest on debt, unlike the dividends paid on preferred stock. Consequently, PG&E believes that these Deferrable Interest Securities would provide a significantly lower after-tax cost than traditional preferred stock. PG&E also requests a tax treatment similar to that granted to Southern California Edison (SCE) in Decision (D.) 95-04-024 for issues of Deferrable Interest Securities.

Interest Rate Caps, Collars, and Swaps

In normal market conditions, variable interest rate debt initially carries a lower interest rate than comparable fixed-rate debt. However, there is the possibility that the variable rate could increase so that the average variable rate is higher than the fixed rate. In order to reduce exposure to interest rate risk, PG&E proposes to negotiate some type of maximum rate, usually called a cap. In that case, even if variable rates increase above the cap or ceiling rate, PG&E would only pay the ceiling rate. In addition to the ceiling rate, sometimes the counterparty to the contract desires to have a floor rate. In the event that the variable rate falls below the floor rate, PG&E would pay the floor rate.

PG&E proposes to enter into interest rate swap agreements (without the necessity for prior consent from the Commission), to convert fixed interest payments into favorable floating-rate payment or vice versa, or to convert floating-rate payments tied to one index (e.g., the London Interbank Offering Rate or LIBOR) into

floating-rate payments tied to another index (e.g., the Federal Reserve Composite Rate for commercial paper).

Interest rate swaps may be denominated in U.S. dollars or in a foreign currency. If PG&E enters into an interest rate swap denominated in a foreign currency, any exchange risk will be hedged through one or more forward agreements or through a currency swap.

PG&E cited several examples of swap transactions as shown on pages 27 to 29 of the Application.

PG&E states that it will enter into interest rate swap agreements only when such arrangements provide an overall cost of money lower than that available through the issuance of alternate Debt Securities. The terms and conditions of interest rate swaps will be determined by PG&E according to market conditions at the time a swap is negotiated.

In previous decisions, the Commission has authorized interest rate swaps and other rate payment exchange contracts subject to certain restrictions.

Accordingly, CACD recommends the following conditions be placed on PG&E's transactions pertaining to interest rate risk management:

1. Interest rate swap agreements should not exceed at any time 20% of PG&E's total long-term debt outstanding (including Diablo Canyon).
2. If PG&E elects to terminate the interest rate swaps before the original maturity or the interest rate swap partner terminates the interest rate swap, all costs associated with the termination shall be subject to review in PG&E's next cost of capital proceeding.
3. Swap transactions, and other derivative financial instruments carrying potential counterparty risk which PG&E receives in connection with long-term debt, must have counterparties with credit ratings equal to or better than PG&E.

4. PG&E should maintain and make available within 30 days of a request by CACD a report analyzing the swap including all costs associated with the swap in comparison to a projection of all-in cost without a swap.
5. PG&E should maintain and make available within 30 days of a request by CACD a complete copy of the executed swap agreement and all associated documentation.
6. PG&E should separately report all interest income and/or expenses arising from all interest rate swaps in all monthly and annual financial reports to the Commission.

Consistent with D.90-12-094, D.91-12-021, D.92-06-031 and D.93-06-082, swap transactions shall not be considered as additional debt for purposes of calculating the amount of authorization used.

Public Utilities (PU) Code § 701.5 prohibits utilities from issuing bonds, notes, guaranteeing financial transactions, or pledging utility assets for or on behalf other their subsidiaries or affiliates, but allows exceptions in some instances.

PU Code § 701.5 states:

With respect to financing arrangements which are established after January 1, 1988, no electrical, gas, or telephone corporation, whose rates are set by the commission on a cost-of-service basis, shall issue any bond, note, lien, guarantee, or indebtedness of any kind pledging the utility assets or credit for or on behalf of any subsidiary or affiliate of, or corporation holding a controlling interest in, the electrical, gas, or telephone corporation. The commission may, however, authorize an electrical, gas, or telephone corporation to issue any bond, note, lien, guarantee, or indebtedness pledging the utility assets or credits as follows: ... (c) For or on behalf of a subsidiary or affiliate if it engages in activities which support the electric, gas, or telephone corporation in its operations or service, these activities are, or will be, regulated either by the commission or a comparable federal agency, and the issuance of the bond, note, lien, guarantee, or indebtedness is specifically approved in advance by the commission.

The commission shall not approve the bond, note, lien, guarantee, or indebtedness unless the commission finds and determines that the proposed financing will benefit the interests of the utility and its ratepayers.

PG&E asserts that its sole purpose for forming SPVs would be to engage in financing transactions for the purpose of raising capital in a manner advantageous to PG&E and its ratepayers. PG&E believes its interest payments to an SPV would be sufficient to cover the payments on the QUIPS/MIPS and that even after taking into account any costs, expenses or liabilities potentially incurred by the SPV in connection with the financing for which PG&E would be responsible, would result in a lower cost of capital being flowed through to PG&E ratepayers, thus meeting the requirements for an exception under PU Code § 701.5.

As of now, we acknowledge that no particular factor is determinative of whether an instrument constitutes debt or equity. We recognize that PG&E's proposal has been structured to be debt in meaningful respects and that lower cost, greater cash flow, and higher retained earnings when compared with other equity alternatives, may be achieved. A number of companies have formed special purpose entities and issued MIPS in similar fashion since these securities were introduced in the market in late 1993. This Commission has granted similar authorization under PU Code § 701.5 for Deferrable Interest Securities to San Diego Gas and Electric Company and SCE.

PG&E's SPVs would be created solely for the purpose of issuing securities to the public to support PG&E's operations or service. PG&E shall have 100% ownership and control of the SPVs. In addition, the activities of the SPVs will be subject to federal or state securities regulation and to the regulation of this Commission through its oversight of PG&E's financing activities. To the extent PG&E establishes one or more SPVs, the sole purpose of the entities would be the issuance of securities to the public to support PG&E's utility operations or service; under PG&E's ownership and control; subject to state and federal securities regulation and to the regulation of this Commission.

Thus, PG&E's proposed deferrable interest securities transaction meets the requirements of PU Code § 701.5(c).

Considering that deferrable payment hybrids have become quite popular since their introduction over a year ago, we believe in general that Deferrable Interest Securities are a form of debt obligation worthy of consideration. Deferrable Interest Securities are a new form of debt that carry distinct advantages to the utility and its ratepayers (equity features, interest payment deferral, bond rating benefits, and some tax advantage.)

Pursuant to PU Code § 701.5(c), we will approve PG&E's request to guarantee or otherwise secure, through one or more agreements to such effect, the QUIPS/MIPS obligations issued by SPVs and all costs, expenses and liabilities of the SPVs as described in the Application and supplemental data to the Application. Pursuant to PU Code § 818 we will also authorize PG&E to directly issue QUIDS, MIDS or other subordinated deferrable interest debentures with features similar to the QUIPS and MIPS to investors without the use of SPVs.

We caution PG&E, however, that our finding that the issuance of Deferrable Interest Securities through SPVs or directly to investors without the use of SPVs, will benefit both PG&E and its ratepayers does not constitute a blank check for including the resulting cost of capital in its capital structure in a later proceeding.

As we do with all financial authorizations, we remind PG&E that it must demonstrate and support in a future proceeding that the specific capital costs incurred were appropriate and beneficial under the circumstances. Furthermore, we will limit ratepayers' responsibility for expenses that may arise from interest on taxes that may be assessed by the Internal Revenue Service (IRS) if expected tax advantages do not materialize (back taxes), as well as any penalties or interest on penalties. Ratepayers shall not be responsible for penalties or interest on penalties. Ratepayers will be responsible for (1) back taxes, to the extent that the benefits of reduced taxes were flowed through to them, and (2) interest on ratepayer recovered back taxes, calculated at no more than the rate earned on prime, three-month

commercial paper, as reported in the Federal Reserve Statistical Release, G-13.

PG&E is placed on notice by this decision that the Commission may review the reasonableness of the effective interest rates for swaps, interest rate caps, floor or collar agreements, Debt Securities issued in a foreign-denominated currency, and for Deferrable Interest Securities in conjunction with PG&E's general rate case or other proceedings. The Commission reserves the right to make a full assessment and measurement of Deferrable Interest Securities at a future date.

Competitive Bidding Rule

Under Resolution F-616, the Commission's Competitive Bidding Rule is not applicable to debt issues for which competitive bidding is not viable or available. PG&E requests exemption for the following:

1. Debt issues of \$300,000,000 principal amount or greater.
2. Variable rate debt securities.
3. Tax-exempt debt securities
4. Notes issued on a continuous or periodic basis.
5. Private placements with, or loans from banks, insurance companies or other financial institutions.
6. Arrangement of standby letters of credit.
7. Authority bonds.
8. Interest rate caps, collars or Swaps and Debt Securities issued in connection with interest rate caps, collars or Swaps.
9. Deferrable Interest Securities.

PG&E states that Deferrable Interest Securities are relatively new and the transactions to date have been done on a

negotiated basis rather than a competitive basis because a longer marketing period is required as these securities are distributed to retail investors.

PG&E claims that while it may be possible in theory to solicit bids for interest rate caps, collars or swaps or for Debt Securities to be issued in connection with interest rate caps, collar or swaps, the existing market does not operate in that manner. Interest rate caps, collars and swaps are opportunistic transactions that are not always available to PG&E at an economic cost. When an economic interest rate cap, collar or swap opportunity becomes available, PG&E may be one of many firms to which the interest rate cap, collar or swap has been presented. PG&E must be able to respond quickly to take advantage of the opportunity.

Similarly, PG&E must be positioned to issue Debt Securities in connection with interest rate caps, collars or swaps when a lower interest rate can be obtained than would otherwise be available. In order to arrive at a lower overall cost than PG&E otherwise could obtain, the Debt Security and the interest rate cap, collar or swap must be priced as one transaction. The timing and the terms of the Debt Security and the interest rate cap, collar or swap must match and one transaction cannot proceed without the other.

PG&E believes that compelling circumstances exist for exemption for issues of \$300,000,000 principal amount or larger, and that the exemption would afford it the flexibility to meet its financial requirements on the most favorable terms available. The size of a debt offering can determine whether competitive bid or a negotiated basis will produce the lowest cost. In a negotiated offering, an underwriting syndicate can be formed that consists of virtually the entire investment banking community. Because competitive bidding divides the community into several competing bidding syndicates, each syndicate has fewer participants. As a result, each participant must agree to underwrite a larger portion of the issue and thereby increase its risk. For small issues this may not result in a higher cost, but for large issues the

participants are likely to require a premium to take on the greater risk.

PG&E states that statistics suggest that, while the capital markets can accommodate competitive bidding for issues larger than \$300,000,000, such issues are infrequent. PG&E is convinced that competitive bidding tends to fragment the capital commitment and placement capabilities of underwriters, who must work against each other in a competitive bid situation and have less time to gauge and build market demand for a successful offering. As a result, competitive bidding for issues of \$300,000,000 or larger is likely to result in a higher cost of funds. PG&E believes that, for the foregoing reasons, the sale of Debt Securities in excess of \$200,000,000 or greater through negotiations would enable it to obtain a cost of money at least as low as, if not lower than, would result by sale pursuant to the Competitive Bidding Rule.

PG&E intends to effect the marketing of its MTN program like its existing commercial paper program through a group of dealers on a best-efforts or agency basis that is incompatible with the Competitive Bidding Rule.

Exhibit A to Resolution (Res.) F-616 states:

Securities privately placed with specific lenders and bank term loans obviously must be negotiated. ... Certain tax-exempt pollution control bonds have terms which are specifically negotiated. ... It is reasonable that these types of debt instruments should be exempt from the Competitive Bidding Rule.

PG&E requests an exemption from the Competitive Bidding Rule for private placements of Debt Securities with, or direct loans from, banks, insurance companies or other financial institutions, for the issuance of Authority bonds and for the issuance of letters of credit.

PG&E acknowledges that Debt Securities may be sold by means of competitive bidding, negotiated public offering, direct placements or other offerings exempt from the Commission's

competitive bidding requirements. If Debt Securities are sold by means of competitive bidding in compliance with D.38614, as amended by D.49941, D.75776, D.81908 and Res. F-616, PG&E proposes to observe the following:

1. PG&E will contact, by telephone or otherwise, a selected group of prospective bidders to invite the submission of bids for the purchase of Debt Securities at such time and place as may be specified by PG&E;
2. PG&E does not intend to publish a public invitation for bids or to take any action to notify any other prospective bidders, although it will respond to requests for information and permit others to submit bids if they so choose; and
3. Bids may be submitted to PG&E by telephone or otherwise.

PG&E also seeks exemption from the one-day notice requirement contained in Res. F-616 to be able to contact the prospective bidders and adjust the terms of the offering up to the last moment. The adjustments in the size or terms of the offering might come on the day of the pricing in response to the market conditions. The prospective bidders can adequately respond to the adjusted terms without having a 24-hour period to consider the change.

In order to provide added flexibility to take advantage of market opportunities, PG&E also requests use of the following procedures, without newspaper publication:

1. to accelerate, postpone or cancel the scheduled date and time for receipt of bids;
2. to reject all bids submitted;
3. to request the resubmission of bids;
4. to reschedule subsequent receipt of bids; and
5. to vary the amount, terms and conditions of the Debt Securities submitted for bids.

CACD advises us that PG&E's requests and reasons for exemption from the Competitive Bidding Rule raise no questions that should dissuade us from giving favorable consideration to the matter. We will accept CACD's recommendations.

As was permitted in D.90-12-094 dated December 19, 1990, modifying D.88-04-063 dated April 27, 1988, D.91-12-021 dated December 4, 1991, D.92-06-031 dated June 3, 1992, and D.93-06-082 dated June 23, 1993, we will authorize for this Application an exemption from the Competitive Bidding Rule for debt issues such as those cited above, elimination of the one-day notice period, and allow the use of certain bidding procedures.

We will also permit PG&E to be exempt in this case from the Competitive Bidding Rule for letters of credit and for issues of Deferrable Interest Securities. Res. F-616 specifically provides that in response to changing business and economic conditions and the emergence of more complex and sophisticated financing methods, a number of debt securities, either by their nature or by established business practices, do not lend themselves to competitive bidding.

Exemption from G.O. 24-B for MTNS and Standby Letters of Credit

PG&E notes in the Application that compliance with G.O. 24-B requires monthly filings with the Commission. Since the MTN program is designed for continuous or periodic sales, PG&E requests authorization to be relieved of the necessity of complying with the G.O. 24-B for sales of Debt Securities under the MTN program. In lieu of a report or reports under G.O. 24-B, PG&E proposes to file with the Commission, on or before the 25th day of the month following each quarter, a statement for the preceding quarter showing the aggregate principal amount, interest rate, maturity and cost to PG&E of Debt Securities sold in connection with the MTN program. In addition, PG&E proposes to include the dollar amount and terms of standby letters of credit in the requested quarterly statement.

PG&E's request is consistent with the reports currently required by the Commission in D.88-06-083 for PG&E's existing shelf registration program for its Common Stock, Dividend Reinvestment

Plan, Savings Fund Plan, Stock Option Plan and Long-Term Incentive Plan.

CACD has reviewed PG&E's request and finds no objections that should dissuade us from giving favorable consideration to the exemption from compliance with G.O. 24-B with respect to the debt issuance set forth in the Application. CACD recommends, and we concur, that authorization should be granted.

Construction Budgets

PG&E's construction budgets for the years 1995, 1996 and 1997 amount to approximately \$3,739,000,000, estimated as of December 31, 1994, shown as Schedule I of the supplemental data to the Application. Major classifications of the total budgeted construction are summarized as follows:

<u>Component</u>	<u>(In Thousands)</u>		
	<u>1995</u>	<u>1996</u>	<u>1997</u>
Electric Department	\$ 834,000	\$ 933,000	\$ 890,000
Gas Department	<u>343,000</u>	<u>366,000</u>	<u>373,000</u>
Total	\$1,177,000	\$1,299,000	\$1,263,000

We will not make a finding in this decision on the reasonableness of the estimated construction expenditures. These are issues normally tested in general rate cases or other proceedings.

Cash Requirements Forecast

As shown in Schedule III of the supplemental data to the Application, PG&E's cash requirements forecasts for the years 1995, 1996 and 1997, estimated as of December 31, 1994, are summarized as follows:

	<u>1995</u>	(In Thousands) <u>1996</u>	<u>1997</u>
Funds Used or Required for Construction Expenditures (excluding Allowance for Funds Used During Construction and reimbursables)	\$1,143,672	\$1,268,793	\$1,234,233
Maturities and Redemption of Long-Term Debt (including sinking fund requirements and Preferred Stock)	<u>912,000</u>	<u>353,000</u>	<u>321,015</u>
Subtotal	\$2,055,672	\$1,621,793	\$1,555,248
Less: Estimated Cash from Internal Sources (excluding AFUDC)	<u>2,154,972</u>	<u>2,402,793</u>	<u>913,248</u>
Additional New Funds Required from Outside Sources	\$(99,300)	\$(781,000)	\$ 642,000

PG&E's cash requirements forecast indicates that internally generated funds will provide all of PG&E's cash requirements for 1995 and 1996. PG&E projects it will need funds from external sources amounting to \$642,000,000 for the calendar year 1997.

Capital Ratios

PG&E's capital ratios as of December 31, 1994, reflected in its Application and in supplementary data provided to CACD, are set forth below, as recorded and as adjusted to give pro forma effect to the transactions that follow:

	(In Thousands)			
	December 31, 1994		Pro forma	
Long-Term Debt	\$ 8,336,990	45.7%	\$ 8,814,404	43.1%
Short-Term Debt	<u>379,300</u>	<u>2.1%</u>	<u>1,860,573</u>	<u>9.1%</u>
Total Debt	\$ 8,716,290	47.8%	\$10,674,977	52.2%
Preferred Stock	\$ 870,495	4.8%	\$ 932,995	4.5%
Common Equity	<u>8,635,025</u>	<u>47.4%</u>	<u>8,861,204</u>	<u>43.3%</u>
Total	\$18,221,810	100.0%	\$20,469,176	100.0%

PG&E states in the Application that the pro forma capitalization ratios, as set forth above, include the maximum amount of securities authorized, and do not reflect PG&E's expected financial performance and financing policies.

Debt

1. Credit facilities not exceeding \$1,000,000,000 aggregate principal amount (authorized by D.86-08-051 dated August 18, 1986, D.87-05-045 dated May 29, 1987, D.93-05-051 dated May 19, 1993 and D.93-11-062 dated November 23, 1993). (Standby lines of credit with banks in the amount of \$1,000,000,000 have been executed but no borrowings were outstanding on December 31, 1994 or as of the date of the Application;
2. The proposed remaining issuance of long-term debt obligations from PG&E to the State of California, Department of Water Resources in an aggregate principal amount not exceeding \$96,804,215 (authorized in the amount of \$73,500,000 by D.82-12-008 dated December 1, 1982 and as increased to \$136,000,000 in D.86-08-024 dated August 6, 1986);
3. The proposed remaining issuance of not exceeding \$566,625,000 aggregate principal amount of Debt Securities (authorized by D.93-06-082 dated June 23, 1993);

4. The retirement at maturity of \$962,588,728 aggregate principal amount of outstanding Debt Securities during the remainder of 1995 and in 1996 and 1997;
5. The redemption of (a) \$174,933,000 aggregate principal amount of Debt Securities to meet sinking fund requirements and (b) \$98,493,000 aggregate principal amount of Debt Securities for early redemptions during the remainder of 1995 and in 1996 and 1997;
6. The proposed issuance of not exceeding \$50,000,000 of the \$400,000,000 aggregate principal amount of Debt Securities requested in the Application ((\$350,000,000 is included in Preferred Stock below);
7. The proposed remaining issuance of the maximum authorized amount of short-term debt securities (a total of \$1,481,273,119 aggregate principal amount) (authorized by PU Code §823(c) and by D.87-09-056 dated September 23, 1987);

Preferred Stock

8. The proposed remaining issuance of Preferred Stock with an aggregate par value not exceeding \$62,500,000 (authorized by D.93-06-082 dated June 23, 1993);
9. The early redemption or repurchase of Preferred Stock with an aggregate par value of \$350,000,000 during the remainder of 1995 and in 1996;
10. The proposed issuance of Deferrable Interest Securities (for capital structure purposes, these securities, while issued as debt, are accorded substantial preferred equity treatment by the rating agencies due to certain features) with an aggregate par value not exceeding \$350,000,000 of the \$400,000,000 requested in the Application;

Common Stock

11. The issuance of 2,721,218 shares of Common Stock (with proceeds of \$68,871,000 at a stock price averaging \$25.31) and the proposed remaining issuance of not exceeding 44,260,254 shares of Common Stock in connection with the Savings Fund Plan, the Dividend Reinvestment Plan, the Shelf Registration Program, the Stock Option Plan and the Long-Term Incentive Program with estimated proceeds of \$1,327,807,620 using a stock price of \$30.00) (authorized by D.93-06-083 dated June 23, 1993 which granted PG&E's requests to combine Common Stock authorizations of 55,500,000 shares under the four currently authorized plans as well as to grant a new authorization for 40,000,000 shares);

12. The repurchase of 39,016,667 shares of Common Stock (estimated at \$1,170,500,000 using a stock price of \$30.00) in 1995 and 1996.

Capital structures are normally subject to review in cost of capital or general rate case proceedings. Therefore, we will not make a finding in this decision regarding the reasonableness of the projected capital ratios for ratemaking purposes.

Use of Proceeds

PG&E proposes to use the proceeds from the sale of Debt Securities, as requested in the Application, other than accrued interest and after payment and discharge of obligations incurred for expenses incident to the issuance and sale, for the following purposes:

1. For the acquisition of property;
2. For the construction, completion, extension or improvement of its facilities;
3. For the improvement or maintenance of its services;
4. For the discharge or lawful refunding of its obligations;
5. For the possible redemption or purchase, if economic, and retirement of a portion of its outstanding debt or preferred stock, with or without the payment of cash;
6. For the reimbursement of monies actually expended from income or from any other money in PG&E's treasury not secured by or obtained from the issue of stocks, stock certificates or other evidences of interest or ownership, or bonds, notes or other evidences of indebtedness, for the purposes mentioned above except maintenance of service and replacements;
7. For future capital additions and improvements for its Qualified Facilities; or
8. For such other purposes as are described in PU Code § 817. The amounts so reimbursed will become a part of PG&E's general treasury funds.

PG&E intends to use a portion of its general treasury funds to repay a portion of its short-term borrowings outstanding at the time of receipt of proceeds.

Findings of Fact

1. PG&E needs external funds for the purposes set forth in the Application.

2. PG&E's proposal to guarantee or otherwise secure the deferrable interest obligations and securities issued by one or more SPVs and to enter into one or more agreements to pay, guarantee or otherwise secure all costs, expenses and liabilities of the SPVs under a QUIPS/MIPS arrangement or to issue QUIDS/MIDS directly to investors would be for proper purposes and could offer financial advantages to PG&E and its ratepayers.

3. The proposed issue of Debt Securities, which includes Deferrable Interest Securities and Notes with attached warrants which entitle the bearer to purchase shares of PG&E Common Stock, \$5 Par Value, will be used for proper purposes and not adverse to the public interest.

4. The use of credit enhancements, interest rate caps, collars and Swaps in appropriate circumstances is not adverse to the public interest.

5. The use of standby letters of credit with terms longer than one year to guarantee PG&E's performance or payment of certain obligations is reasonable.

6. The money, property, or labor to be procured or paid for by the proposed issuance of Debt Securities is reasonably required for the purposes specified in the Application.

7. Authorizing PG&E to determine the amount, timing, terms and conditions, and method of offering its proposed Debt Securities under the Commission's Competitive Bidding Rule as set forth in this decision would not be adverse to the public interest.

8. In respect to standby letters of credit, PG&E should be relieved of the necessity of complying with the monthly requirements of G.O. 24-B in lieu of a quarterly filing.

9. The Commission does not by this decision determine that PG&E's construction budget, capital ratios, cash requirements forecast, Swaps, and Debt Securities issued in a foreign-denominated currency are necessary or reasonable for ratemaking purposes. These issues are normally tested in general rate case proceedings.

10. PG&E's swap and other derivative financial transactions should not exceed 20% of PG&E's total long-term debt outstanding (including Diablo Canyon).

11. Limiting PG&E's swap and other derivative financial instruments issued in connection with long-term debt to those involving counterparties having credit ratings equal to or better than PG&E's will keep counterparty risk within acceptable bounds.

12. Granting PG&E's request for exemption from the Competitive Bidding Rule in this case: for debt issues of \$300,000,000 principal amount or greater, for the issuance of MTNs, letters of credits, for private placements with, or loans from, banks, insurance companies or other financial institutions, and for the issuance of Authority bonds; exemption from the one-day notice period contemplated in Res. F-616, and permitting the use of certain bidding procedures would not be adverse to the public interest.

13. PG&E has valid reasons for requesting exemption from the Competitive Bidding Rule for issues of subordinated debentures in conjunction with a Deferrable Interest Securities offering.

14. The Commission reserves the right to make a full assessment of the availability of competitive bidders for Deferrable Interest Securities at a future date.

15. Savings resulting from the difference in costs between raising capital through Deferrable Interest Securities and a traditional preferred stock issuance will be passed to ratepayers in the annual revisions of PG&E's authorized cost of capital.

16. PG&E will engage in Deferrable Interest Securities only while a net benefit to it and its customers exists.

17. Ratepayers should not be responsible for penalties or interest on penalties, if any. Ratepayers will be responsible for any back taxes to the extent that the benefits of reduced taxes were previously flowed through to them. Ratepayers will also be responsible for interest on ratepayer recovered back taxes, calculated at the prime, three-month commercial paper rate, as reported in the Federal Reserve Statistical Release, G-13.

18. The SPVs described in the Application would be established solely for the purpose of issuing securities to the public to support PG&E's utility operations or service, would be under PG&E's ownership and control, and would engage in activities regulated by this Commission.

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

Conclusions of Law

1. A public hearing is not necessary.
2. The Application should be granted to the extent set forth in the order which follows.
3. The proposed issuance of Debt Securities, including Deferrable Interest Securities and Notes with attached warrants, is for lawful purposes and the money, property or labor to be obtained by them is required for these purposes. Proceeds from the security issues may not be charged to operating expenses or income.
4. The number of shares outstanding, the total par or book value of these shares and the dividends paid do not determine the allowable return on plant investment. This authorization is not a finding of the value of PG&E's stock or property, nor does it indicate the amounts to be included in ratemaking procedures.
5. The following order should be effective upon payment of the fee set by PU Code § 1904 to enable PG&E to proceed with its financings expeditiously.
6. Pursuant to PU Code § 701.5(c), a utility may be authorized by the Commission to issue bonds, notes, guarantees, or pledge assets on behalf of a wholly owned subsidiary, provided the subsidiary supports the utility's operations or service.

7. Pursuant to PU Code § 818, no public utility may issue stocks and other evidences of indebtedness payable at periods of more than 12 months without Commission authorization.

8. The following order should be effective on the date of signature.

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 to do the following:

a. To issue, sell, and deliver, in one or more series: it's First and Refunding Mortgage Bonds, debentures, convertible debentures, debentures with warrants, subordinated deferrable interest debentures, promissory notes and other evidences of indebtedness and to enter into direct loans from banks, insurance companies or other financial institutions (Debt Securities); to unconditionally guarantee or otherwise secure the obligations issued by, or on behalf of, the State of California or any political subdivision in respect of the financing of PG&E's water pollution control facilities, sewage systems, solid waste disposal facilities and other facilities qualifying for tax-exempt financing under the Internal Revenue Code or any combination thereof; to arrange for standby letters of credit with terms longer than one year to guarantee PG&E's performance of certain obligations; and to guarantee or otherwise secure from time to time, through one or more agreements to such effect, the issuance of deferrable interest securities or obligations (Deferrable Interest Securities) issued by one or more special purpose vehicles (SPVs) and to enter into one or more agreements to pay, guarantee or otherwise secure all costs, expenses and liabilities of the SPVs; with all such issues and sales of Debt Securities, guarantees, letters of credit and Deferrable Interest Securities being upon terms and conditions substantially consistent with those set forth in or contemplated in Application 95-06-060 (Application) and supplemental data to the Application and not to exceed an aggregate principal amount of \$400,000,000;

b. To enter into one or more interest rate caps, collars or swap agreements (Swaps) as contemplated in the Application, from time to time, without the necessity for prior consent from the Commission, pursuant to PU Code § 701, subject to the restrictions and limitations set forth in this decision; any such interest rate caps, collars or Swaps shall not be considered as additional debt for purposes of calculating the amount of authorization used;

c. To issue, sell and deliver such Debt Securities under the Commission's Competitive Bidding Rule with exemptions therefrom for debt issues of \$300,000,000 or greater; for variable rate debt securities; for tax-exempt debt securities; for the issuance of notes through PG&E's Medium-Term Notes (MTN) program on a continuous or periodic basis through dealers on a best-efforts or agency basis; for private placements with, or loans from banks, insurance companies or other financial institutions, for the arrangement of standby letters of credit and the issuance of Authority bonds as described herein; for any such interest rate caps, collars or Swaps and Debt Securities issued in connection with interest rate caps, collars or Swaps; and for Deferrable Interest Securities transactions as herein; with the elimination of the one-day notification requirement specified in the Competitive Bidding Rule; and with modification to permit the use of the bidding procedures described in this decision;

d. To issue such number of shares of its Common Stock, \$5 par value, in exchange for and upon retirement of Debt Securities issued, as contemplated in the Application, upon conversion of said Debt Securities and in exchange for equity warrants, as may be required from time to time for such purpose;

e. To use the net proceeds from the sale of securities, exclusive of accrued interest, for the purposes set forth in the Application;

f. To use any accrued interest received in connection with the issue or issues of Debt Securities for general corporate purposes.

2. PG&E may arrange credit agreements or other credit facilities as may be necessary for the purpose of issuing the Debt Securities authorized herein and may modify such credit facilities without further authorization from the Commission.

3. PG&E shall use the net proceeds from the sale of Debt Securities for the purposes set forth in the Application.

4. PG&E is limited to entering into Swaps for no more than 20% of its long-term debt (including debt for Diablo Canyon).

5. PG&E shall limit its use of Swaps and other derivative financial instruments issued in connection with long-term debt to those involving counterparties having credit ratings equal to or better than PG&E's.

6. PG&E shall separately report all interest income and expenses arising from all Swaps in all financial reports to the Commission.

7. If Debt Securities are sold by means of competitive bidding, PG&E may do the following:

a. Contact by telephone or otherwise, a selected group of prospective bidders to invite the submission of bids for the purchase of Debt Securities at such time and place as may be specified by PG&E;

b. Not publish a public invitation for bids or to take any action to notify any other prospective bidders, although it will respond to requests for information and permit others to submit bids if they so choose; and

c. Accept bids by telephone or otherwise.

8. With respect to fixed-rate bonds and debentures (other than tax-exempt securities) sold publicly in the domestic market, PG&E may accelerate, postpone or cancel the scheduled date and time for receipt of bids; reject all bids submitted; request the resubmission of bids; reschedule subsequent receipt of bids; and vary the amount, terms and conditions of the Debt Securities submitted for bids. All of these actions may be taken without notice by newspaper publication.

9. PG&E is relieved of the necessity of filing monthly reports under General Order (G.O.) 24-B for securities sold under the MTN program and standby letters of credit. In lieu of this requirement, PG&E shall submit to the Commission Advisory and Compliance Division (CACD), or or before the 25th of the month following each quarter, a statement for the preceding quarter showing (a) the aggregate principal amount, interest rate, maturity and cost to PG&E of Debt Securities sold in connection with the MTN program, and (b) the dollar amount and terms of any standby letters of credit issued under this decision.

10. PG&E shall submit an original and one copy of the reports required by Ordering Paragraph 9 to CACD with a transmittal letter stating the Application and Decision numbers.

11. In all other respects, PG&E shall submit the reports required by G.O. 24-B except as noted above.

12. PG&E shall maintain, and, within thirty days from request, provide CACD any or all of the following:

a. The price, interest rate and other terms pertaining to its issuance of Debt Securities, the amount of Common Stock that may be issued upon the conversion of Debt Securities or the exercise of equity warrants, the conversion or warrant price and applicable ratio.

b. If Debt Securities are sold by means of a public offering, copies of its final prospectus pertaining to the Debt Securities.

c. For any Debt Securities sold by competitive bidding, the name of the bidder, the price, interest rate and cost of money to PG&E based on the price and interest rate.

d. In relation to the issuance and sale of any series of Debt Securities by negotiated public offerings or private placements, including commercial bank borrowings, in either the domestic or foreign markets, a report showing why the resulting interest rate and cost of money were the most advantageous to PG&E and its ratepayers.

e. A report analyzing the Swaps including all costs associated with such a contract in comparison to a projection of all-in cost without such as contract.

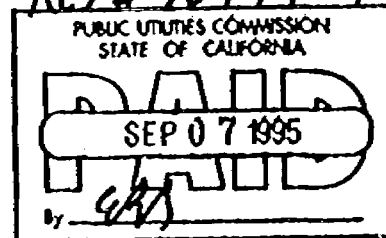
f. A complete copy of the executed Swap agreement and all associated documentation.

13. The authority granted by this order to issue securities will be effective when PG&E pays \$206,000, the fee set by Public Utilities Code Sections 1904(b) and 1904.1.

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