

ENERGY/RHG

Decision 00-04-057 April 20, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC)
COMPANY U-39-M, for an Order (i) (a) modifying)
Decision No. 83597 dated October 16, 1974 (as)
modified by Decision No. 90847 dated October 10,)
1979, Decision No. 91196 dated January 8, 1980,)
and Decision No. 93788 dated December 1, 1981))
authorizing it to issue short-term debt securities in)
an aggregate principal amount of \$1,292,638,219 in)
excess of that authorized by Public Utilities Code)
Section 823(c); and (b) to refund previously-issued)
short-term debt securities; and (ii) modifying)
Decision No. 92555 dated December 30, 1980 (as)
modified by Decision No. 82-04-077 dated)
April 21, 1982 and Decision No. 84-08-021 dated)
August 1, 1984) authorizing it to enter into a)
nuclear fuel financing arrangement.)
_____)

Application 87-08-008
(Petition for Modification
filed February 3, 2000)

SUPPLEMENTAL OPINION

Summary of Decision

This decision grants Pacific Gas and Electric Company (PG&E) the authority requested in its petition for modification of Decision (D.) 87-09-056 (Petition).

Pursuant to Rule 47 of the Commission's Rules of Practice and Procedure¹ and Pub. Util. (PU) Code Sections 818, 823(c) and 823(d), PG&E seeks permission to issue Extendible Commercial Notes (ECNs) under its short-term debt authority granted in D.87-09-056.

ECNs are money market products (essentially short-term debt instruments), first marketed in September 1998. They are senior unsecured debt obligations that can be issued with an initial redemption date from 1 to 90 days. At the initial redemption date, the ECN is paid off

¹ Rule 47(d) provides that if a petition for modification is not filed within one year of the effective date of the decision sought to be modified, the petition must explain why the petition could not have been filed within that one-year period. This Petition is being filed more than one year after the September 23, 1987 effective date of D.87-09-056, because Extendible Commercial Notes were first marketed in September 1998.

just like commercial paper – or the notes can be extended for a maximum aggregate term of 390 days. The ECN market is liquid and growing. Its current size is approximately \$3 billion with 23 issuers.

Notice of the filing appeared on the Commission's Daily Calendar of February 8, 2000. No protests have been received.

Background

D.87-09-056 dated September 23, 1987 in Application (A.) 87-08-008, modified D.83597 (as modified by D.90874, D.91196, and D.93788) and among other things, authorized PG&E to issue and sell its short-term debt securities in an aggregate principal amount of \$1,292,638,219 in excess of the 5% provision (\$546,560,700) under Section 823(c) and to refund its previously-issued short-term debt securities such that the combined terms of the refunded issues and the new debt securities may exceed 12 months without the need for additional Commission authorization.

At the time D.87-09-056 was issued, PG&E's short-term debt authority amounted to 16.83% of its total capitalization of \$10,931,214,000 or 11.83% in excess of the amount provided in Section 823(c).

Pursuant to its Income Statement for the nine months ended September 30, 1999, shown as attachment to the Petition, PG&E reported it generated total operating revenues of \$6,896,079,000 and net income of \$518,771,000.

Also shown as part of the attachment to the Petition is PG&E's balance sheet as of September 30, 1999, summarized as follows:

(\$ Thousands)

<u>Assets and Other Debits</u>	
Net Utility Plant (w/ Nuclear Fuel)	\$15,180,533
Gas Stored Underground – Non-current	47,426
Other Property and Investments	1,348,130
Current and Accrued Assets	1,668,730
Deferred Debits	<u>3,620,764</u>
Total Assets and Other Debits	<u>\$21,865,583</u>
<u>Liabilities and Other Credits</u>	
Proprietary Capital	\$ 5,967,210
Long-Term Debt	7,818,164
Other Non-current Liabilities	996,708
Current and Accrued Liabilities	2,158,489
Deferred Credits	<u>4,925,012</u>
Total Liabilities and Other Credits	<u>\$21,865,583</u>

Modification Sought

PG&E seeks to issue ECNs under its short-term debt authority granted in D.87-09-056. ECNs are a flexible, homogeneous, standardized product, very similar to commercial paper. Issuers cannot tailor their ECN programs to have a maximum maturity of less than 390 days. Standardization of the product is key to expanding the market for this type of short-term security and for placing it with investors. ECN dealers and the institutional investors expect a “uniform” product, i.e., the same terms for all issuers. ECNs are being marketed as an alternative product to commercial paper, and PG&E states in the Petition that its intended use of ECNs will be the same as its use of commercial paper, i.e., for interim financing and for general corporate purposes.

Credit rating agencies consider ECNs to be short-term instruments. Although ECNs are considered a separate program, they are rated the same as an issuer's short-term, commercial paper rating. Also, like commercial paper, ECNs are privately placed and exempt from

registration under the Securities Act of 1933. In order to obtain competitive rates, PG&E will utilize two or more ECN dealers.

PG&E states in the Petition that there are two primary differences between ECNs and commercial paper. First, the bank market provides liquidity for commercial paper, as unutilized bank lines of credit must back it. The institutional investor market (via the extension feature) provides liquidity for ECNs. The short-term money market, i.e., institutional investor market, is a more efficient and less expensive source of liquidity than the bank market. This is advantageous for an ECN issuer as new bank lines do not need to be established or capacity reserved under existing bank lines in order to issue ECNs. This alternative to reliance on bank liquidity support is particularly advantageous in the current bank market when banks are pricing their reserves and commitments very tightly.

Unlike commercial paper, which is limited to a maximum maturity of 270 days, at initial maturity an ECN issuer can choose to extend to a maximum maturity of 390 days. Because ECNs can have potential maturities slightly in excess of one year, they do not technically fall within the PU Code's treatment of short-term debt. Under the PU Code, short-term debt is defined as debt instruments payable at periods of not more than 12 months after the date of issuance of such instruments. However, because ECNs are almost identical to commercial paper and are viewed by the investment community as a short-term instrument, PG&E requests Commission approval to treat ECNs, for all purposes, like it treats other commercial paper (i.e., as short-term debt). To that end, PG&E proposes that the Commission modify D.87-09-056, specifically identifying ECNs as a permitted debt instrument thereunder.

PG&E states in the Petition that classifying ECNs as long-term debt for regulatory purposes because they might be outstanding for one year plus 25 days would have several adverse and unjustified consequences. First, if treated like long-term debt, in spite of their similarity to short-term debt, issuance of ECNs would use up PG&E's Commission-approved new debt authorization at a rapid rate. If the average life of an ECN were 30 days, authorization for long-term debt, typically maturing in 3 to 30 years would be exhausted quickly. The administrative burden to PG&E and the Commission for frequent new debt authorizations would be high. Second, if treated as long-term debt, outstanding ECNs would be required to be included in the Cost of Bond Money Report, which is a supporting documentation in PG&E's Annual Cost of Capital filing. The true cost of long-term debt would be inappropriately reduced

by the inclusion of ECNs, which are in effect short-term debt instruments. Third, under PG&E's debt evergreening authorization (adopted in D.93-12-022, as modified by D.94-04-084 and D.97-12-038), PG&E must calculate and report to the Commission the weighted average maturity of its long-term debt. This calculation is a key factor used in determining PG&E's current evergreening authorization. Inclusion of ECNs in that calculation would misleadingly reduce the weighted average maturity of PG&E's long-term debt. It would appear that PG&E was shortening the maturity profile of its long-term debt, when, in fact, the calculation was only reflecting the addition of short-term debt to the long-term debt portfolio.

The use of ECNs as another short-term debt instrument is advantageous to PG&E due to the savings of bank fees caused by the shifting of liquidity from the bank market to the money markets. The potential 390-day maximum maturity of ECNs (which is only 25 days in excess of the PU Code's treatment of short-term debt) is a means for providing liquidity support through the institutional investor market, and does not justify classifying ECNs as long-term debt instruments.

The Pub. Util. Code governs the regulation of short-term debt, and the latitude on the amount and use of short-term debt under the code may be modified with the consent of the Commission.

Section 823(b) states that a public utility may issue notes for proper purposes, payable at period of not more than twelve months after the date of the issuance of the notes without the consent of the Commission. Section 823(c) provides that notwithstanding the provisions of subdivision (b), the electric utilities must obtain the consent of the Commission should their short-term borrowings exceed 5% of the par value of the other securities then outstanding. Section 823(d) provides that the continuous refunding of previously issued short-term debt securities, which brings the combined terms of the original and the refunding debt securities to exceed twelve months requires Commission authorization.

Staff advises us that PG&E's request to issue ECNs under its short-term debt authority in D.87-09-056 raises no questions that should dissuade us from giving favorable consideration to the authority requested. ECNs are almost identical to commercial paper and are viewed by the investment community as a short-term debt instrument.

Because of the newness of ECNs, we will grant PG&E's request to issue ECNs under its short-term debt authority granted in D.87-09-056 for a period of five years, and this Commission

reserves the right to make a full assessment and measurement of ECNs at a future date. In all other respects, D.87-09-056 as herein modified, remains in full force and effect.

The five-year authority to issue ECNs in this decision in no way inhibits PG&E from seeking extension when the time and need arise. The action prescribed in this instance will not change or alter PG&E's \$1,292,638,219 short-term borrowing authority in excess of the amount provided in Section 823(c).

We note herein that PG&E's 1987 capitalization when compared to its capitalization as of September 30, 1999, decreased from \$10,931,214,000 to \$7,798,136,000. Accordingly, PG&E's short-term debt authority of \$1,292,638,219 in excess of the amount provided in Section 823(c) now amounts to a total outstanding short-term debt of \$1,682,254,019 (effectively 21.6% of total capitalization or 16.6% in excess of the amount provided in Section 823(c)).

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

We approve PG&E's Petition in this order.

Findings of Fact

1. PG&E, a California corporation, is a public utility subject to the jurisdiction of this Commission.
2. Pub. Util. Code Section 818 requires Commission approval for the issue of evidences of indebtedness payable at periods of more than 12 months.
3. Short-term debt transactions are governed by Pub. Util. Code Section 823.
4. PG&E has need for external funds for the purposes set forth in the Petition.
5. PG&E's proposal to issue ECNs as short-term debt instruments could offer financial advantages to PG&E and its ratepayers.
6. Authorizing PG&E in this order for a period of five years to issue ECNs would not alter or impede the Commission's objective of monitoring the issuance of short-term debt in accordance with Section 823.
7. Notice of the filing of the Petition appeared on the Commission's Daily Calendar of February 8, 2000. There is no opposition to the Petition and there is no reason to delay granting the modification described therein.

Conclusions of Law

1. A public hearing is not necessary.
2. The Petition should be granted to the extent set forth in the order which follows.
3. The following order should be effective on the date of signature.

SUPPLEMENTAL ORDER

IT IS ORDERED that:

1. Decision (D.) 87-09-056 in Application (A.) 87-08-008, is hereby modified to allow Pacific Gas and Electric Company (PG&E), pursuant to Public Utilities Code Sections 818, 823(c), and 823(d), to issue Extendible Commercial Notes (ECNs) under the short-term debt authority granted by D.87-09-056. More specifically, PG&E's issuance of ECNs combined with all other short-term debt shall be limited to an aggregate principal amount of \$1,292,638,219 in excess of the 5% provision under Section 823(c), and PG&E may refund its previously issued ECNs such that the combined terms of the refunded issues and the new debt securities may exceed 12 months without the need for additional Commission authorization.

2. PG&E is also authorized to categorize ECNs as short-term debt for reporting and calculational purposes as described in its Petition for Modification (Petition), in connection with its long-term debt authorization, evergreening authorization, and Annual Cost of Capital filing.

3. The authority to issue ECNs under D.87-09-056 shall have a term of five years from the date of this order, unless suspended or extended by the Commission.

4. The Commission reserves the right to make a full assessment and measurement of ECNs at a future date.

5. The Petition is granted as set forth above.

6. In all other respects, D.87-09-056 remains in full force and effect.

7. A.87-08-008 is closed.

This supplemental order is effective today.

Dated April 20, 2000, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

CARL W. WOOD

Commissioners