

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMISSION ADVISORY & COMPLIANCE DIVISION
Accounting and Finance Branch

RESOLUTION E-3048
November 25, 1987

RESOLUTION

ORDER AUTHORIZING PACIFIC GAS AND ELECTRIC COMPANY (PG&E) TO ENTER INTO A NUCLEAR DECOMMISSIONING MASTER TRUST AGREEMENT FOR DIABLO CANYON UNITS 1 AND 2 AND FOR HUMBOLDT BAY UNIT 3 NUCLEAR GENERATING STATIONS.

(Advice letter 1160-E, filed June 23, 1987).

SUMMARY

1. By Advice Letter No. 1160-E, Pacific Gas and Electric Company (PG&E) submitted for Commission approval nuclear decommissioning tax-qualified and non-qualified trust agreements for Diablo Canyon Nuclear Generating Station Units 1 and 2, (Diablo) and for Humboldt Bay Nuclear Generating Station Unit 3. These agreements are submitted pursuant to Ordering Paragraphs 2 and 3 of Decision 87-05-062 (the "Decision") which requires PG&E to obtain the Commission's prior approval to execute these agreements.
2. The Commission finds that it is reasonable to establish a tax-qualified trust under Internal Revenue Service (IRS) Code Section 468A for California jurisdictional revenue requirements, and if necessary and approved by the IRS, another separate trust for Federal Energy Regulatory Commission jurisdictional revenue requirements to decommission these units.
3. The Commission finds that it is reasonable to establish a non-qualified trust for California jurisdictional revenue requirements, and if necessary another separate trust for Federal Energy Regulatory Commission jurisdictional revenue requirements to decommission these units.
4. PG&E also filed master investment advisor agreements with Advice Letter 1160-E. This master investment advisor agreement will be authorized by a separate Resolution of this Commission.

BACKGROUND

1. The Tax Reform Act of 1984 added Section 468A to the Internal Revenue Code (I.R.C.), to allow a utility to elect, under certain conditions, a current year federal income tax deduction for those future nuclear power plant decommissioning costs that are reflected in the utility's currently authorized revenue requirements. One of the conditions is that the decommissioning costs be segregated in a trust fund. In California, the major regulated electric utilities were affected by the statute, including Pacific Gas and Electric Company.

2. The statute was considered in OII 86, an Investigation on the Commission's own motion into present and alternative methods of financing nuclear facility decommissioning costs. In this proceeding, Decision 87-05-062 set forth the costs, revenue requirement, and trust issues necessary for the other California utilities to qualify revenue collected to provide for eventual decommissioning of nuclear power plants, for a current year federal tax deduction. Diablo revenues were authorized in Decision 87-03-029 and Humboldt revenues in Resolution E-3041.

3. The Decision also recognized that, according to the statute, trusts must be set up to manage the funds until they are actually spent on decommissioning. One trust agreement can be established to hold all trust funds, but that trust must separately account for the trust funds pertaining to each nuclear units, and must be further separated between qualified trust funds and nonqualified. Trusts in conformity with Section 468A of the statute are considered "qualified trusts".

4. Nonqualified trusts are also established for decommissioning costs which are collected in rates but which are not eligible under the tax laws for current tax deductions. These trusts are established to ensure that those funds will be available at the time of plant decommissioning.

5. In summary, Decision 87-05-062 found that:

a) Southern California Edison (Edison), San Diego Gas & Electric Company (SDG&E) and Pacific Gas and Electric Company (PG&E) should establish trust funds for nuclear decommissioning costs which qualify for a tax deduction under I.R.C. Section 468A.

b) Edison, SDG&E and PG&E should establish trust funds for nuclear decommissioning costs which do not qualify for a tax deduction under I.R.C. Section 468A.

c) Tax qualified trust fund investments are limited by Internal Revenue Service (IRS) tax regulation to:

- (i) public debt securities of the United States;
- (ii) obligations of a state or local government that are not in default as to principal or interests; and
- (iii) time or demand deposits in a bank or an insured federal credit union.

The tax qualified trust funds may be invested in any of these permitted investments.

d) Non-tax qualified 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 however, that investments in high quality equity securities shall not exceed 60% of the trust fund's fair market value.

e) Because of the lead time required for adequate preparation of the IRS filings and the trusts, Decision 87-05-062 was made effective on the date signed (May 29, 1987).

DISCUSSION

1. By this Advice Letter, PG&E has prepared and submitted a master tax qualified trust agreement for Diablo Canyon units 1 and 2 and for Humboldt Bay Unit 3 in compliance with Decision 87-05-062. In addition, a non-tax qualified trust agreement is provided for these Units to govern that portion of the trust funds for the facilities which do not qualify under I.R.C. Section 468A. All trust agreements have been drafted to conform with the requirements set forth in Decision 87-05-062 (pages 30-34).

2. The Commission Advisory and Compliance Division (CACD), formerly the Evaluation & Compliance Division, has conducted a series of meetings with PG&E and other Commission staff in the course of its review of the Advice Letter. In the course of that review various clarifications, additions and deletions were discussed for inclusion in the final adopted draft documents to be attached to this Resolution. PG&E was a full participant in the process and provided comments, responses to inquiries and proposed further draft language for use in the trust agreements.

3. The Staff proposed alteration to the composition and the reporting requirements of the Committees which govern the conduct of the Trusts, the actions of the Trustee and the actions of the Investment Manager(s). PG&E has agreed to the changes and additions. The changes primarily include the addition of "outside" members to the Committee who are not Directors, officers, employees or agents of PG&E. The staff believes that this will ensure compliance with the Public Utility Code Sections 1363, 1365(c), 1367, 1368, and 1369 and in particular to ensure that the Trusts are "externally managed, segregated fund(s)". The Commission will exercise confirmation authority over the "outside" Committee Members. The members of the Committee will serve 5-year terms and may be removed by the majority vote of the Commission for reasonable cause.

4. PG&E believes that because the Trust authorized by this resolution contains specific California ratemaking requirements and other specific California statutory requirements, and because it requires extensive review and approval by the Commission, that it would be impractical to apply this trust to FERC jurisdictional decommissioning expenses. The Internal Revenue Code only authorizes one tax-qualified trust for each nuclear power plant. If another trust is necessary for FERC jurisdictional decommissioning expenses it would require IRS approval. The staff believes that PG&E should seek such approval but should not take any action that would endanger the tax-qualified status of the California Commission jurisdictional trust. The California jurisdictional portion of these units is the primary concern of this Commission.

5. The outside members of the Committee must be selected by PG&E and their names submitted to the Commission for confirmation. Because of the time constraints applicable to that process and the need for PG&E to proceed with the Trust, the staff believes PG&E should be allowed to operate the Trust with a Committee composed entirely of internal PG&E members, pursuant to section 3.01 of the Master Trust Agreement, until outside members of the Committee have been confirmed by the Commission. PG&E should submit the nominees within 90 days of the effective date of this resolution and when a complete submittal has been made, the 60-day period for Commission review set forth in the attached trust agreement should commence.

6. The fees to be charged by PG&E's chosen trustee, Harris Trust and Savings Bank appear to be reasonable when compared with the fee levels summarized in Decision 87-05-062 (pp. 2 & 3 mimeo). PG&E believes these fees are fair, reasonable and commensurate with the services to be provided.

7. The staff of the Commission Advisory and Compliance Division has reviewed this filing and finds the modified agreements to be in conformance with the requirements of Decision 87-05-062.

8. The Commission staff has received no protests in this matter.

9. In accordance with Section III, Paragraph G of General Order 96-A, PG&E has mailed a copy of only the advice letter (without the attached trust fund agreements) to the utilities and interested parties shown on its regular advice letter mailing list and on the service lists in the Diablo Canyon and Humboldt cases.

FINDINGS

1. We find that the nuclear decommissioning trust agreements for Diablo Canyon Units 1 and 2 and for Humboldt Bay Unit 3 applicable to these trust funds, as modified by Pacific Gas and Electric Company and the Commission Advisory and Compliance Division, as attached to the Resolution, are reasonable.

2. PG&E should do nothing which endangers or invalidates California jurisdictional trust.

3. We further find that these modified agreements are in compliance with Decision 87-05-062; therefore,

IT IS ORDERED that:

1. Pacific Gas and Electric Company is authorized to place into effect the modified nuclear decommissioning trust agreements for Diablo Canyon Units 1 and 2 and Humboldt Bay Unit 3 in the form that are attached hereto.
2. All subsequent proposed trust agreements, if any, shall also require Commission approval.
3. The Trust Committee may operate on an interim basis with all PG&E members until the Commission confirms PG&E's nominees for outside members of the Trust Committee.

4. PG&E shall submit the names of their nominees for outside members of the Trust Committee within 90 days of the effective date of this resolution.
5. The trust established by and for the California jurisdiction shall not be used in any way to accrue, manage or dispose of decommissioning funds for PG&E's FERC jurisdictional share of decommissioning revenue requirement.
6. Advice Letter No. 1160-E shall be marked to show that it was approved by Resolution No. E-3048 with the trust agreements modified to the form attached hereto.
7. The Executive Director is authorized to sign the trust agreement on behalf of the Commission.
8. After the trust agreements are executed by all parties, the Chief Administrative Law Judge or her designate shall be the contact person for all matters regarding the trust and ancillary agreements.
9. This Resolution is effective today.

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on November 25, 1987. The following Commissioners approved it:

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners



Executive Director