

PUBLIC UTILITIES COMMISSION505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

September 22, 2004

**Agenda ID #3925
Ratesetting**

TO: PARTIES OF RECORD IN APPLICATION 04-05-041

This is the draft decision of Administrative Law Judge (ALJ) Kenney. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's Rules of Practice and Procedure (Rules). These rules are accessible on the Commission's Website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the Assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:hkr

Attachment

Decision **DRAFT DECISION OF ALJ KENNEY** (Mailed September 22, 2004)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company to issue, sell, and deliver one or more series of Debt Securities and to guarantee the obligations of others with respect to the issuance of Debt Securities, the total aggregate principal amount of such long-term indebtedness and guarantees not to exceed \$2 billion; to execute and deliver one or more indentures; to sell, lease, assign, mortgage, or otherwise dispose of or encumber utility property; to issue, sell and deliver in one or more series, an aggregate amount not to exceed \$200 million par or stated value of First Preferred Stock -- \$25 Par Value; to issue an aggregate \$2 billion of short-term debt obligations; to utilize various debt enhancement features; enter into interest-rate hedges; and for an exemption from the Commission's Competitive Bidding Rule. (U 39 M)

Application 04-05-041
(Filed May 27, 2004)

**OPINION AUTHORIZING THE ISSUANCE OF
DEBT AND PREFERRED STOCK**

TABLE OF CONTENTS

<u>Title</u>	<u>Page</u>
OPINION	2
1. Summary	2
2. Procedural Background	4
3. PG&E's Current Financing Arrangements	4
4. PG&E's Application to Issue Debt and Preferred Stock	5
A. Short-Term Debt	5
i. PG&E's Request	5
ii. Discussion	8
B. Long-Term Debt & Preferred Stock	12
i. PG&E's Request	12
ii. Discussion	13
C. Encumbrance of Utility Property	17
i. PG&E's Request	17
ii. Discussion	17
D. Types of Debt and Preferred Stock	20
i. PG&E's Request	20
ii. Discussion	23
E. Interest-Rate Caps, Collars, Swaps, and Hedges	24
i. PG&E's Request	24
ii. Discussion	24
F. Exemption from the Competitive Bidding Rule	26
i. PG&E's Request	26
ii. Discussion	28
G. Use of Subsidiaries	28
i. PG&E's Request	28
ii. Discussion	29
H. General Order 24-B	31
i. PG&E's Request	31
ii. Discussion	31
I. Matters Not Addressed	32
5. Fees	32

6. California Environmental Quality Act	34
7. Category and Need for Hearings	36
8. Comments on the Draft Decision	37
9. Assignment of Proceeding	37
Findings of Fact	37
Conclusions of Law	42
ORDER	49
Exhibit A: PG&E's Authorized and Outstanding Debt and Equity	
Exhibit B: Projected Uses and Sources of PG&E's Cash	

O P I N I O N**1. Summary**

In Application (A.) 04-05-041, Pacific Gas and Electric Company (PG&E) requests authority to issue \$2.7 billion of short-term debt, long-term debt, and preferred stock. In response to A.04-05-041, this Opinion authorizes PG&E to do the following pursuant to Pub. Util. Code §§ 701.5, 816 - 830, and 851¹:

1. Issue \$2 billion of short-term debt. Of this amount, \$500 million may only be used for the following purposes:
 - a. Procure natural gas for PG&E's utility customers during price spikes.
 - b. Procure electric power for PG&E's utility customers during price spikes.
 - c. Respond to major natural disasters or other cataclysms.
 - d. Provide liquidity during a major disruption of PG&E's ability to bill, collect, and/or process utility customer bills.
2. Issue \$1.453 billion of long-term debt and \$85 million of preferred stock for the following purposes:
 - a. Finance capital expenditures.
 - b. Retire long-term debt.
 - c. Redeem preferred stock.
3. Issue contingent mortgage bonds as security for other debt.
4. Pledge gas and electric accounts receivable for the purpose of procuring gas and electricity for PG&E's customers.
5. Issue a wide variety of short-term debt, long-term debt, and preferred stock.

¹ All statutory references are to the Public Utilities Code unless otherwise indicated.

6. Exclude from the determination of PG&E's outstanding debt any credit enhancements (e.g., letters of credit, mortgage bonds, bond insurance, etc.) that do not increase the amount of debt owed by PG&E.
7. Utilize interest-rate caps, collars, hedges, and other financial instruments for the purpose of managing interest rate risks.
8. Issue all Debt Securities² without obtaining competitive bids, except fixed-rate Debt Securities in the form of mortgage bonds, intermediate and long-term notes, and debentures of \$200 million or less in principal amount that are sold publicly in the domestic market.
9. Issue Debt Securities through regulated subsidiaries and governmental agencies when doing so results in lower cost of debt for PG&E and its ratepayers.
10. Guarantee the Debt Securities of regulated subsidiaries and governmental agencies that issue securities on behalf of PG&E.
11. Report the information required by General Order 24-B on a quarterly basis instead of monthly as required by the General Order.

This Opinion denies A.04-05-041 to the extent the Application requests authority to issue \$547 million of long-term debt and \$115 million of preferred stock because PG&E has not demonstrated that it has a need to issue this long-term debt and preferred stock. This Opinion also denies A.04-05-041 to the extent it requests that all hedges be excluded from the determination of PG&E's outstanding debt. Hedges recorded as a liability shall be counted as outstanding debt to the extent that such hedges are not offset by changes to the fair value or cash flows associated with the risks being hedged.

² PG&E's Application defines "Debt Securities" as "long-term debt securities, including but not limited to first and refunding mortgage bonds, debentures, notes, overseas indebtedness, foreign currency denominated securities, medium-term notes, preferred securities, floating rate debt, credit or loan agreements, and other evidence of indebtedness."

2. Procedural Background

On April 6, 2001, PG&E filed for protection under Chapter 11 of the U.S. Bankruptcy Code. PG&E's Plan of Reorganization (POR) under Chapter 11 became effective on April 12, 2004 (Effective Date). The POR incorporates the Settlement Agreement approved by the Commission in Decision (D.) 03-12-035 to resolve PG&E's Chapter 11 proceeding.

PG&E filed A.04-05-041 on May 27, 2004. Notice of A.04-05-041 appeared in the Commission's Daily Calendar on June 2, 2004. There were no protests or other responses to A.04-05-041. PG&E filed supplements to A.04-05-041 on June 21, July 16, and August 19, 2004.

In A.04-05-041, PG&E requests authority to issue \$2.7 billion of short-term debt, long-term debt, and preferred stock. PG&E represents that the requested debt and preferred stock are not subject to PG&E's POR or the Settlement Agreement. PG&E also represents that it does not need to provide notice to, or obtain permission from, the Commission's bankruptcy Financing Team³ before PG&E issues any of the debt and preferred stock requested in A.04-05-041.⁴

3. PG&E's Current Financing Arrangements

The types and amount of debt and equity that PG&E is currently authorized to issue are set forth in Appendix A of this Opinion. The Commission authorized most of PG&E's current debt in D.04-01-024 to finance PG&E's emergence from bankruptcy (referred to hereafter as "exist financing").⁵

³ The Commission's bankruptcy Financing Team was authorized by D.02-11-030, Ordering Paragraphs (OPs) 1 and 4. The membership of the Financing Team was established by D.02-11-030 and D.03-09-020.

⁴ PG&E Supplement filed on July 16, 2004, response to Question 25.

⁵ D.04-01-024, OPs 1 and 5.

Pursuant to this authority, PG&E issued \$6.7 billion of First Mortgage Bonds (FMBs) and obtained two credit facilities. One of these facilities is an \$850 million revolving credit facility; the other is a \$650 million accounts receivable (A/R) financing facility. PG&E intends to use these two credit facilities to cover operating expenses, seasonal fluctuations in cash flows, and for letters of credit to support purchases of natural gas and electricity. In addition, PG&E's exit financing includes reimbursement agreements under which lenders issued, on the Effective Date, the following: (1) \$620 million in new letters of credit to support \$614 million of previously issued pollution control bonds; (2) a term-loan facility of \$345 million that was used to purchase certain pollution control bonds on the Effective Date; and (3) four amended reimbursement agreements with lenders who had purchased \$454 million in reimbursement obligations owed to the issuers of drawn letters of credit that backed certain pollution control bonds. PG&E's obligations under the \$850 million revolving credit facility and the reimbursement agreements are secured with FMBs. PG&E states that the Commission's Financing Team approval all components of PG&E's exit financing in letters dated October 24, 2003, March 4, 2004, and April 1, 2004.

4. PG&E's Application to Issue Debt and Preferred Stock

A. Short-Term Debt

i. PG&E's Request

Pursuant to D.04-01-024, the Financing Team authorized PG&E to issue \$1.5 billion of short-term debt consisting of (1) an \$850 million revolving credit facility, and (2) a \$650 million A/R financing facility. PG&E is authorized to use these facilities as follows:

Authorized Uses of Short-Term Debt (\$ Million)			
	Cash Borrowing	Letters of Credit	Total
Revolving Credit Facility	\$200	\$650	\$850
A/R Facility	\$650	0	\$650
Total	\$850	\$650	\$1,500

The letters of credit under the revolving credit facility are used primarily to provide collateral for (1) natural gas and electricity procurement transactions, and (2) workers' compensation.⁶ The A/R facility provides for the continuous sale of PG&E's customer accounts receivable and functions as a line of credit.

In A.04-05-041, PG&E requests authority to issue \$500 million of additional short-term debt, for total short-term debt authority of \$2 billion.⁷ PG&E's request consists of \$500 million in "new money" and \$1.5 billion in refunding authority to repay or replace the \$1.5 billion of short-term debt authorized by D.04-01-024. PG&E proposes that the \$2 billion be divided evenly between cash borrowing and collateral for energy procurement transactions. PG&E states that its request, if granted, would supersede PG&E's authority to issue \$1.5 billion of short-term debt pursuant to D.04-01-024.⁸

PG&E proposes to use the \$2 billion of short-term debt for the following purposes: (1) finance gas storage inventories at a level of \$200-\$250 million,

⁶ Letter from the Commission's Financing Team dated March 4, 2004, pp. 24 – 30. This letter was provided by PG&E in its Supplement filed on July 16, 2004.

⁷ PG&E's request for \$2 billion of short-term debt includes the amount allowed by Section 823(c) (i.e., 5% of the par value of PG&E's outstanding long-term securities).

⁸ PG&E Supplement filed on July 16, 2004, response to Question 19.

(2) respond to contingencies such as temporary under-collections of balancing accounts, and (3) provide credit support for energy procurement. PG&E anticipates that it will gradually increase its procurement of electricity during 2005-2008, and that such procurement may require additional credit support, particularly with respect to the procurement of natural gas for new generation. PG&E is also concerned that its existing authority to issue \$1.5 billion of short-term debt will not be sufficient under some circumstances. PG&E states that it can currently borrow a maximum of \$200 million in cash under the revolving credit facility and \$650 million in cash under the A/R facility, for a total of \$850 million in cash. However, because the A/R facility is securitized by PG&E's accounts receivables, the amount that PG&E can borrow under the facility varies with the monthly level of accounts receivables. Hence, in months when sales are low, the maximum borrowing capacity under the A/R facility can be reduced by \$200 million (i.e., from \$650 million to \$450 million), leaving a combined cash borrowing capacity under both facilities of \$650 million (i.e., \$450 million under the A/R facility and \$200 million under the revolving credit facility).

PG&E believes there is a reasonable possibility that its need for short-term borrowing could exceed \$850 million. For example, higher energy prices or lower sales could lead to greater short-term borrowing. According to PG&E, its monthly cash borrowings during 1999 and 2000 were usually well below \$500 million, but climbed to \$1.096 billion in February 1999 and \$0.923 billion in March 1999. With the onset of the energy crisis, PG&E's monthly borrowings climbed to \$0.917 billion in September 2000, and reached \$3.086 billion in December 2000. In light of this historical perspective, PG&E believes it is prudent to increase its cash borrowing capacity. PG&E is also concerned that a major disruption in its billings and collections could significantly reduced cash

receipts for several days, during which PG&E would have to rely on short-term borrowing to make up the difference. PG&E states that it receives, on average, \$50 million of cash receipts from customers per day.

ii. Discussion

PG&E's request for authority to issue short-term debt is subject to Sections 816, 823(b), 823(c), and 823(d) which provide, in relevant part, as follows:

Section 816: The power of public utilities to issue [debt] is a special privilege, the right of supervision, regulation, restriction, and control of which is vested in the State, and such power shall be exercised as provided by law under such rules as the commission prescribes.

Section 823(b): A public utility may issue notes, for proper purposes and not in violation of any provision of law, payable at periods of not more than 12 months after the date of issuance of the notes without the consent of the commission.

Section 823(c): Notwithstanding the provisions of subdivision (b), no public utility . . . shall, without the consent of the commission, issue notes payable at periods of not more than 12 months after the date of issuance of the notes if such notes and all other notes payable at periods of not more than 12 months after the date of issuance of such notes . . . would exceed in aggregate amount 5 percent of the par value of the other securities then outstanding. In the case of securities having no par value, the par value for the purposes of this subsection shall be the fair market value as of the date of issue.

Section 823(d): No note payable at a period of not more than 12 months after the date of issuance of such note shall, in whole or in part, be refunded by [debt or equity] . . . without the consent of the commission.

The Commission has broad discretion to determine if a utility should be authorized to issue short-term debt pursuant to Sections 816, et seq. The primary

standard used by the Commission is whether a utility has demonstrated a reasonable need to issue short-term debt for proper purposes.⁹ Where necessary and appropriate, the Commission may attach conditions to the issuance of short-term debt in order to protect and promote the public interest.

To assess PG&E's need to issue short-term debt, it is useful to consider how much short-term debt PG&E has issued in the past. In D.87-09-056, the Commission authorized PG&E to issue approximately \$1.840 billion of short-term debt.¹⁰ Decision 00-10-065 increased PG&E's authority to \$3.076 billion in response to skyrocketing prices for wholesale electricity.¹¹ The following table shows how much short-term debt PG&E had outstanding during the two-year period ending with the onset of the electricity crisis in the second half of 2000:

⁹ The term "proper purposes" refers to expenditures that are necessary or proper to promote legitimate objects of a public utility of the type concerned. (207 Cal 630 (1929).)

¹⁰ D.87-09-056, 1987 Cal. PUC Lexis 224, *2, *3, and *17. All references to authorized short-term debt include the short-term debt authorized by Section 823(c).

¹¹ D.00-04-057, 2000 Cal. PUC Lexis 391, *3 and *11.

Historic PG&E Monthly Short-Term Borrowing Outstanding (\$ Million)		
	1999	2000
January	\$ 593	\$ 547
February	\$ 1,096	\$ 415
March	\$ 923	\$ 209
April	\$ 187	\$ 433
May	\$ 0	\$ 318
June	\$ 0	\$ 408
July	\$ 0	\$ 339
August	\$ 0	\$ 697
September	\$ 77	\$ 917
October	\$ 178	\$ 1,189
November	\$ 178	\$ 2,278
December	\$ 449	\$ 3,086
Source: PG&E Supplement filed on July 16, 2004, response to Question 14		

PG&E is currently authorized to issue \$1.5 billion of short-term debt. While this is less than what PG&E was authorized to issue prior to the electricity crisis and PG&E's bankruptcy, it appears to be more than enough to meet PG&E's needs under normal circumstances as the above table demonstrates.

PG&E contends that it will need authority to issue more than \$1.5 billion of short-term debt when abnormal circumstances occur. We agree that it is prudent for PG&E to maintain financial reserves to cope with extraordinary events such as major natural disasters that temporarily reduce cash remittances from customers or dramatic surges in the price of wholesale gas or electricity. Because the frequency and magnitude of such events is inherently uncertain, we must use our experience and judgment to determine the amount of slack financial capacity that should be maintained to cope with such events. We conclude that

authorizing PG&E to issue \$500 million of additional short-term debt should provide an adequate financial cushion for many scenarios.

For the preceding reasons, we will authorize PG&E to issue \$2 billion of short-term debt, including the amount authorized by Section 823(c). Of this amount, PG&E shall maintain a reserve capacity to issue \$500 million of short-term debt that can only be used for the following purposes:

- Procure natural gas for PG&E's customers during price spikes.¹²
- Procure electricity for PG&E's customers during price spikes.
- Respond to major natural disasters, large scale terrorist attacks, or other cataclysms.
- Provide liquidity during a major disruption of PG&E's ability to bill, collect, and/or process utility customer bills.

The authority granted by today's Opinion supersedes PG&E's authority to issue short-term debt pursuant to D.04-01-024. We will not divide PG&E's authority between cash borrowing and collateral for energy procurement transactions. PG&E may choose any combination of the two.¹³ Consistent with Section 824, PG&E shall maintain records to identify the specific short-term debt issued pursuant to today's Opinion and to demonstrate that the proceeds from such debt have been used only for the purposes authorized by today's Opinion.

¹² We define the commencement of a "price spike" as an increase in the price of gas or electricity of at least 50% over the average of the preceding 12 months.

¹³ We expect that PG&E's need to provide collateral to support energy procurement transactions should decline as PG&E's credit ratings improve. We expect PG&E to adjust its short-term financing arrangements accordingly.

B. Long-Term Debt & Preferred Stock

i. PG&E's Request

Appendix A of this Opinion shows that PG&E is currently authorized to issue \$11.0 billion of long-term debt and equity, and that PG&E currently has outstanding \$10.5 billion of long-term debt and equity.¹⁴

In A.04-05-041, PG&E requests authority to issue \$2 billion of long-term debt and \$200 million of preferred stock. PG&E does not seek evergreen authority for the requested long-term debt and preferred stock.¹⁵ The following table shows when PG&E intends to issue the requested debt and preferred stock and how PG&E intends to use the proceeds.

Timing and Uses of Long-Term Debt and Preferred Stock Pursuant to A.04-05-041 (\$ Million)					
	2005	2006	2007	2008	Total
Long-Term Debt Issued	\$785	\$144	\$277	\$247	\$1,453
Preferred Stock Issued	0	0	\$ 85	0	\$ 85
Total	\$ 785	\$ 144	\$ 362	\$ 247	\$1,538
Capital Expenditures	\$324	\$137	\$303	\$244	\$1,008
Retire 18-Month Bridge Loans	\$454	0	0	0	\$ 454
Redeem Preferred Stock	\$ 7	\$ 7	\$ 59	\$ 3	\$ 76
Total	\$ 785	\$ 144	\$ 362	\$ 247	\$1,538
Source: PG&E Supplement Filed on July 16, 2004, Response to Question 9, Schedules II(1) and III(1).					

¹⁴ PG&E Supplement filed on July 16, 2004, response to Questions 1, 4, and 23. The quoted amounts of long-term debt and equity include the consolidated debt of PG&E's subsidiaries. The difference between PG&E's authorized versus outstanding debt and equity is due almost entirely to PG&E having less outstanding debt than authorized for (i) the reinforcement of the Tesla electric transmission line, (ii) the undercollection of PG&E's Transition Revenue Account, and (iii) low-income housing.

¹⁵ PG&E Supplement filed on July 16, 2004, Response to Question 6.

Although PG&E requests authority to issue \$2.2 billion of long-term debt and preferred stock, the above table shows that PG&E has definitive plans for using only \$1.538 billion of the requested long-term debt and preferred stock. PG&E anticipates that the balance of the \$2.2 billion, or \$662 million, may be used to pay down additional debt as it matures and to fund additional capital expenditures beyond those currently forecast. For example, PG&E's current forecast of capital expenditures does not include any money for new generation that is being considered in Rulemaking (R.) 04-04-003 or the advanced metering infrastructure that is being considered in R.02-06-001.¹⁶

PG&E notes that the information in the above table incorporates the anticipated issuance of the Energy Recovery Bonds authorized by D.03-12-035 and Senate Bill (SB) 772, which is currently being considered by the Commission in A.04-07-032. PG&E states that the proceeds from the Bonds will be used to redeem \$1.6 billion of two-year bonds due in 2006. PG&E cautions that its long-term debt financing requirements could increase if the Energy Recovery Bonds are not issued as expected. If this were to occur, PG&E expects that its request for \$2.2 billion of additional long-term debt and preferred stock will provide sufficient flexibility to enable PG&E to meet its financial obligations while applying to the Commission for additional long-term financing authority.

ii. Discussion

PG&E's request to issue \$2.2 billion of long-term debt and preferred stock is subject to Sections 816, et seq., which provide, in relevant part, as follows:

¹⁶ PG&E supplement filed on July 16, 2004, response to Question 7.

Section 816: The power of public utilities to issue [debt and preferred stock] is a special privilege, the right of supervision, regulation, restriction, and control of which is vested in the State, and such power shall be exercised as provided by law under such rules as the commission prescribes.

Section 817: A public utility may issue . . . [preferred stock], bonds, notes, and other evidence of indebtedness payable at periods of more than 12 months after the date thereof for any of the following purposes and no others:

- (a) Acquisition of property.
- (b) Construction, completion, extension, or improvement of its facilities.
- (c) Improvement or maintenance of its service.
- (d) Discharge or lawful refunding of its obligations...
- (g) Retirement of or in exchange for one or more outstanding stocks or stock certificates or other evidence of interest or ownership of such public utility, or bonds, notes, or other evidence of indebtedness of such public utility, with or without the payment of cash.

Section 818: No public utility may issue [debt or preferred stock]...unless...it shall first have secured from the commission an order authorizing the issue, stating the amount thereof and the purposes to which the...proceeds thereof are to be applied, and that, in the opinion of the commission, the money, property, or labor to be procured or paid for by the issue is reasonably required for the purposes specified in the order, and that...such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

The Commission has broad discretion under Sections 816, et seq., to determine if a utility should be authorized to issue debt and preferred stock. The

primary standard used by the Commission is whether a utility has demonstrated a reasonable need to issue debt and preferred stock for proper purposes.¹⁷ Where necessary and appropriate, the Commission may attach conditions to the issuance of debt and preferred stock in order to protect and promote the public interest.

PG&E has demonstrated that it has a reasonable need to issue \$1.453 billion of long-term debt and \$85 million of preferred stock during 2004 -2008 for the following purposes:

- Finance capital expenditures.
- Retire bridge loans.
- Redeem preferred stock.

These purposes are authorized by Section 817 and, as required by Section 818, are not reasonably chargeable to operating expenses or income. Therefore, we will grant PG&E authority under Sections 816, et seq., to issue \$1.453 billion of long-term debt and \$85 million of preferred stock for the aforementioned purposes. Consistent with Section 824, PG&E shall maintain records to (1) identify the specific long-term debt and preferred stock issued pursuant to today's Opinion, and (2) demonstrate that the proceeds from such debt and preferred stock have been used only for the purposes authorized by today's Opinion. In addition, PG&E may issue the long-term debt and preferred stock authorized by this Opinion only to the extent that doing so complies with the Commission-adopted capital structure.

¹⁷ The term "proper purposes" means any expenditures that are necessary or proper to promote legitimate objects of a public utility of the type concerned. (207 Cal 630 (1929).)

PG&E does not request, and this Opinion does not grant, evergreen authority to issue long-term debt and preferred stock. Accordingly, PG&E must file an application to obtain Commission authority to issue debt and equity to refinance, refund, redeem, or otherwise replace any long-term debt and preferred stock issued pursuant to this Opinion.

We decline to grant PG&E authority at this time to issue \$547 million of long-term debt (i.e., \$2.000 billion - \$1.453 billion) and \$115 million of preferred stock (i.e., \$200 million - \$85 million). PG&E asserts that it needs authority to issue this long-term debt and preferred stock for the following purposes: (1) to finance capital expenditures for advanced meters, (2) to finance additional generation, and (3) to provide financial flexibility in the event that PG&E cannot issue the Energy Recovery Bonds authorized by D.03-12-035 and SB 772. These matters are currently being considered by the Commission in R.02-06-001, R.04-04-003, and A.04-07-032, respectively. PG&E was unable to forecast when and how much long-term debt and preferred stock needs to be issued for each of the aforementioned purposes. Without such information, we cannot reach the findings required by Section 818. As a result, we are compelled by Section 818 to deny PG&E's request to issue long-term debt and preferred stock for the aforementioned purposes.

We do not intend in this Opinion to prejudge any issues pertaining to advanced meters, additional generation, or the Energy Recovery Bonds that are being considered in other proceedings. Nor do we prejudge PG&E's need to issue additional debt and/or equity after the Commission issues decisions in these other proceedings. PG&E may file another financing application when it can demonstrate a firm and quantifiable need to issue additional debt and/or equity based on Commission decisions issued in these other proceedings.

C. Encumbrance of Utility Property

i. PG&E's Request

PG&E currently has outstanding \$6.7 billion of FMBs and \$2.469 billion of bank loans and other debt secured with FMBs.¹⁸ PG&E believes that because of its recent bankruptcy, it may be required by lenders to secure most of its debt with a like amount of FMBs. Thus, PG&E requests authority under Section 851 to issue FMBs to secure the debt requested in A.04-05-041, excluding FMBs issued as primary, and not contingent, obligations of PG&E.

PG&E also requests authority under Section 851 to use its accounts receivable to secure its debt. PG&E anticipates that such transactions would be structured as a true sale for bankruptcy purposes and debt for financial reporting and tax purposes, although other structures may be developed using accounts receivable as security or collateral.¹⁹

ii. Discussion

PG&E's request to encumber utility property is subject to Section 851 which states, in relevant part, as follows:

Section 851: No [utility]...shall...encumber...any part its plant, system, or other property necessary or useful in the performance of its duties to the public...without first having secured from the commission an order authorizing it to do so. Every such...encumbrance...made other than in accordance with the order authorizing it is void....

¹⁸ These facilities include: \$200 million for insurance on pollution control bond series 96A, \$454 million for a bridge loan on a like dollar amount of redeemed pollution control bonds, \$850 million for a revolving credit facility, and \$620 million for reimbursement agreements associated with outstanding floating-rate pollution control bonds. The use of FMBs to secure this debt will "fall away" if the ratings on PG&E's long-term unsecured debt obligations rise to certain specified levels.

¹⁹ A.04-05-041, pp. 2, 3, and 12.

The Commission has broad discretion to determine if an encumbrance of utility property should be authorized pursuant to Section 851. The primary standard used by the Commission is whether the encumbrance will adversely affect the public interest. The Commission may also consider if the encumbrance will serve the public interest. Where necessary and appropriate, the Commission may attach conditions to an encumbrance in order to protect and promote the public interest.²⁰

We first consider PG&E's request for authority under Section 851 to secure its debt with FMBs. PG&E has a need to issue additional debt for the reasons stated earlier in this Opinion. We have no reason to doubt PG&E's assertion that it will likely be required by lenders to secure most of its debt with a like amount of FMBs. Therefore, we find PG&E's request to be reasonable, and we will grant it. However, if a default occurs and title to PG&E's property is transferred pursuant to FMBs, the transferred property shall not be removed from the provision of utility service to the public without prior authorization from the Commission.

We next consider PG&E's requests for authority under Section 851 to secure its debt with its accounts receivable. There are two somewhat contradictory bodies of Commission precedent that have a bearing on PG&E's request. One body of precedent consists of decisions that have authorized a variety of utilities to use their accounts receivable as collateral to secure their debt. In general, these decisions placed few, if any, restrictions or conditions on

²⁰ D.04-07-023, *mimeo.*, pp. 11-12.

the use of accounts receivable as collateral.²¹ The other body of precedent is confined to PG&E. These decisions, which were issued shortly before and during PG&E's recent bankruptcy, authorized PG&E to pledge its gas customer accounts receivable for the sole purpose of procuring gas supplies for PG&E's core customers, including flowing gas and storage gas.²²

We believe that the second body of precedent provides better guidance. In retrospect, it was fortunate that PG&E's gas accounts receivable were available to be used as collateral for the procurement of gas for PG&E's customers during PG&E's bankruptcy. If PG&E's gas accounts receivable had already been pledged as collateral for other purposes, it is possible that PG&E would not have been able to procure adequate supplies of gas for its customers,²³ thereby causing gas shortages with potentially disastrous consequences for California.²⁴

We conclude that it is in the public interest to ensure that amounts paid by PG&E's customers will always be available to serve as collateral for the procurement of gas and electricity. Therefore, we will limit PG&E's authority to pledge its gas customer accounts receivable to the sole purpose of procuring gas supplies for PG&E's customers, including flowing gas and storage gas. Similarly, we will limit PG&E's authority to pledge its electric accounts receivable to the sole purpose of procuring electric power for PG&E's customers, including any fuels necessary for PG&E's retained generation plants. The restrictions we place

²¹ See, e.g., D.04-01-009 (San Diego Gas & Electric Company), D.03-11-018 (Southern California Edison Company), and D.01-04-031 (Mountain Utilities).

²² See D.04-02-056, D.03-02-061, D.02-03-025, D.01-06-074, D.01-02-050, and D.01-01-062.

²³ PG&E asserted at the time that its ability to procure adequate supplies of gas was dependent on its use of accounts receivable as collateral for gas purchases. (See, e.g., D.04-02-056, Finding of Fact (FOF) 2; D.03-02-061, pp. 3, 4, and FOF 2; and D.01-01-062, FOFs 6, 7, 8, & 10.)

²⁴ D.01-01-062, FOF 9.

on PG&E's authority to pledge its accounts receivable do not apply to the following: (1) the portion of PG&E's accounts receivable that is sequestered for other purposes pursuant to statutes or Commission orders (e.g., accounts receivable that have been or will be pledged to support PG&E's Rate Reduction Bonds and Energy Recovery Bonds), and (2) PG&E's current credit facility of \$650 million that is secured by PG&E's accounts receivable.²⁵ PG&E should not renew this credit facility when it expires²⁶ so that the accounts receivable supporting the credit facility can be used for the purposes authorized by today's Opinion (i.e., to serve as collateral for the procurement of gas and electricity).

D. Types of Debt and Preferred Stock

i. PG&E's Request

In A.04-05-041, PG&E requests authority to issue various types of short-term and long-term debt (referred to collectively as "Debt Securities"). The specific types of Debt Securities that PG&E proposes to issue, which are described on pages 8 to 18 of A.04-05-041, are as follows:

1. Secured Debt Securities in the form of first and refunding mortgage bonds.
2. Unsecured Debt Securities such as debentures and notes.
3. Preferred Securities issued by a subsidiary. The preferred securities would represent an interest in debentures issued by PG&E to the subsidiary and would be guaranteed by PG&E.

²⁵ The \$650 million credit facility, which is authorized by D.04-01-024 and the Commission's Financing Team, provides for the continuous sale of PG&E's customer accounts receivable and functions as a line of credit (i.e., allows PG&E to borrow up to \$650 million of cash).

²⁶ PG&E's Supplement filed on July 16, 2004, indicates that the \$650 million accounts receivable facility will terminate after three years. (See PG&E's response to Question 17, letter from the Commission's Financing Team dated March 4, 2004, Attachment D, PG&E presentation dated March 2, 2004, p. 6.)

4. Overseas Indebtedness sold to foreign investors that would be denominated in U.S. dollars or foreign currencies.
5. Direct Loans obtained from financial institutions such as banks and insurance companies.
6. Revolving Credit and Letter of Credit Facilities obtained from banks and other lenders.
7. Accounts Receivable Financing.
8. Commercial Paper.
9. Extendible Commercial Notes with a maturity of less than 364 days, but at maturity can be extended for a period in excess of one year if not paid or remarketed.²⁷
10. Variable-Rate Debt based on short-term interest rate indices, bankers' acceptances, PG&E's credit ratings, or other factors.
11. Tax-Exempt Debt issued through a governmental body, political subdivision, or other conduit issuer.
12. Debt Securities with one or more of the following features:
 - a. Redemption Provisions that allow a Debt Security to be redeemed or repaid prior to maturity.
 - b. Put Options that allow the holders of Debt Securities to require PG&E or an affiliate to repurchase all or a portion of each holder's securities.
 - c. Sinking Funds.
 - d. Warrants that entitle the holder to purchase an additional bond, note, debenture, or a share of capital stock.
 - e. Credit Enhancements such as letters of credit, standby bond purchase agreements, surety bonds, and insurance policies. The cost of credit enhancements will be included in the cost of the Debt Securities.

PG&E states that Debt Securities will have maximum maturities of 49 years for debentures, notes, preferred securities, direct loans, and first and refunding

²⁷ PG&E states that consistent with D.00-04-057, extendible commercial notes would be treated for all purposes as short-term debt.

mortgage bonds. The principal amount, terms, and conditions of each type of Debt Security will be based on market conditions at the time of sale or issuance. The selection of the specific Debt Securities will be based on lowest overall cost to PG&E and its ratepayers.

PG&E says it may issue Debt Securities directly, through an affiliate, in public offerings, or through private placements.²⁸ Debt Securities may also be sold directly to investors or to underwriters who, in turn, will offer the Debt Securities to investors. Additionally, Debt Securities may be registered with the Securities and Exchange Commission and listed on a stock exchange.

In conjunction with the issuance of foreign currency securities, PG&E requests authority for itself or an affiliate to enter into forward contracts by which a counterparty would be obligated to pay the foreign currency necessary to make principal and interest payments on the foreign currency security. In return, PG&E and/or an affiliate would pay a counterparty U.S. dollars based on a predetermined formula. The cost of the forward contracts will be included in determining the overall cost of foreign currency securities.

To avoid double counting, PG&E requests that credit enhancements for debt not be counted as outstanding debt. PG&E states that credit enhancements do not result in an additional obligation beyond the actual debt that is issued for cash. For example, if an unsecured bond is issued for \$100, PG&E's only obligation is to pay the principal and interest on the \$100. If the \$100 debt is secured with bond insurance, a mortgage bond, and other forms of credit

²⁸ Debt Securities sold in private placements may contain provisions for subsequent public registration.

enhancement, PG&E's total obligation remains at \$100 of principal, plus interest on the principal.

Finally, PG&E requests authority to issue preferred stock in one or more offerings with the method of sale, price, dividend rate, liquidation preferences, and other terms and conditions to be determined prior to each offering based on then prevailing market conditions. The rights, preferences, and privileges applicable to each series of preferred stock will be fixed by resolution of PG&E's board of directors and a certificate of determination of preferences will be filed with the California Secretary of State.

ii. Discussion

PG&E's request for authority to issue many different types of Debt Securities and preferred stock using a wide variety of means is subject to Commission approval pursuant to Sections 816, et seq. We recognize that a vast array of debt and equity financial instruments is available in global financial markets. Providing PG&E with discretion choose among the many different instruments and the many different ways to issue debt and preferred stock should enhance PG&E's ability to obtain capital at the lowest possible cost to PG&E and its ratepayers. Therefore, we will grant PG&E authority under Sections 816 – 830 and 830 to issue the types of Debt Securities and preferred stock described in A.04-05-041 using the means identified in the Application. We expect PG&E to utilize this authority in a reasonable manner.

We also grant PG&E's request to not count as debt any credit enhancements (e.g., letters of credit, mortgage bonds, bond insurance, etc.) that

do not increase the amount of debt owed by PG&E.²⁹ This is consistent with the Commission's long-established practice.³⁰

E. Interest-Rate Caps, Collars, Swaps, and Hedges

i. PG&E's Request

PG&E requests authority to use interest-rate caps, collars, swaps, hedges, and other financial instruments to manage the risks associated with interest rate volatility (collectively, "hedges"). PG&E also requests that these hedges not be counted against its authorized debt, since these hedges would not affect the amount of the underlying debt issued.

PG&E states that the terms and conditions of hedges will be based on market conditions at the time such transactions are negotiated. Additionally, hedges entered into by an affiliate may be guaranteed by PG&E. At this time, PG&E has not identified any hedges related to debt that might be issued under A.04-05-041. PG&E submits that it seeks authority for hedges in order to have this option available in the event an appropriate opportunity arises.

ii. Discussion

PG&E's request to enter into hedges to manage interest rate risks is subject to Sections 816, et seq. Consistent with previous Commission decisions,³¹ we will authorize PG&E to use hedges subject to the following conditions:

²⁹ Any credit enhancements that increase the amount of debt owed by PG&E shall be counted against PG&E's authorized debt.

³⁰ See, e.g., D.04-01-009, D.03-12-004, D.03-07-029, D.03-07-008, and D.03-04-030. Also, the Commission's Financing Team concurrence letter dated March 4, 2005, states at p. 5 that "As represented by PG&E and confirmed by UBS and outside bond and bankruptcy counsel, providing long-term bonds as collateral (credit support) or credit enhancement...does not increase the amount of debt owed by PG&E."

³¹ See, for example, D.95-09-023, D.96-05-066, and D.03-12-004.

1. PG&E shall enter into hedges only when PG&E believes in good faith that the use of hedges will (i) reduce PG&E's cost of capital compared to unhedged Debt Securities, and/or (ii) protect against significant interest rate risks.
2. PG&E will separately report all interest income and expense (as recorded for ratemaking purposes) arising from all hedging transactions in its regular report to the Commission.
3. Hedging transactions will not exceed at any time 20 percent of PG&E's total long-term debt outstanding.
4. All costs associated with hedging transactions shall be subject to review in PG&E's cost of capital proceedings or other appropriate proceedings.
5. Hedges carrying potential counterparty risk must have counterparties with investment grade credit ratings of two notches higher than PG&E.
6. PG&E will make the following available to Commission staff within 30 days of request: (i) all terms, conditions, and other details of hedge transactions; (ii) PG&E's rationale for the hedge transactions; (iii) PG&E's estimated costs for the "alternative" or unhedged transactions; and (iv) copy of the hedge agreements and associated documentation.

We conditionally grant PG&E's request to not count interest-rate hedges as outstanding debt.³² Specifically, we will not count interest-rate hedges against PG&E's authorized debt to the extent the hedges are both (1) recorded as a liability in accordance with generally accepted accounting principles (GAAP), and (2) offset by changes to the fair value or cash flows of the risks being hedged. On the other hand, hedge liabilities will be counted against PG&E's authorized debt to the extent the hedge liabilities are not offset by changes to the fair value

³² Consistent with D.02-11-030, Footnote 13, any debt issued by PG&E as part of a transaction involving an interest-rate swap shall be used to determine the amount of authorized and outstanding debt.

or cash flows associated with the risk being hedged. If PG&E records hedge assets, the portion of the hedge assets that is not offset by changes to the fair value or cash flows of the risks being hedged shall not reduce or affect the determination of PG&E's outstanding debt.

F. Exemption from the Competitive Bidding Rule

i. PG&E's Request

Resolution F-616, issued on October 1, 1986, requires utilities to issue debt using competitive bids. The purpose of this requirement, known as the Competitive Bidding Rule, is to reduce the cost of debt. The Resolution also states that requests for an exemption from the Competitive Bidding Rule will be "entertained for debt issues in excess of \$200 million, and will only be granted upon a compelling showing by a utility that because of the size of the issues, an exemption is warranted."

PG&E requests an exemption for all debt issued pursuant to this Opinion in excess of \$200 million principal amount. PG&E's reasons for the exemption are as follows:

1. Competitively bidding larger issues may result in higher costs due to the fragmenting of the investment banking community into competitive bidding syndicates and the increased risk thereby assumed by each syndicate.
2. The competitive bidding process is fundamentally designed for highly rated, well-known issuers who do not need to avail themselves of the opportunities for communicating to, and receiving market intelligence from, the investment community in order to achieve a successful offering.
3. Competitive bidding may leave PG&E limited and undesirable options for obtaining needed financing.

PG&E notes that Exhibit A of Resolution F-616 exempts the following Debt Securities that are issued on a negotiated basis: securities privately placed with

specific lenders; bank term loans; tax-exempt pollution control bonds; and variable-rate debt. PG&E requests that the following Debt Securities also be exempted from the Competitive Bidding Rule because they are typically issued through negotiated arrangements: notes sold through a placement agent on a reasonable efforts basis; trust preferred securities; accounts receivable financings; overseas indebtedness; foreign currency securities; notes; and interest-rate hedges. PG&E states that pursuant to the Competitive Bidding Rule, other fixed-rate Debt Securities in the form of first and refunding mortgage bonds, intermediate and long-term notes, and debentures of \$200 million or less in principal amount (other than tax-exempt securities) that are sold publicly in the domestic market will be offered through competitive bidding.³³

To provide added flexibility to take advantage of market opportunities, PG&E requests that the Commission modify the Competitive Bidding Rule to permit PG&E to use the following procedures for those situations where the Rule remains applicable:

1. To shorten the time between the issuance of an invitation for bids and the scheduled receipt of bids to a period which is the shortest time reasonably required to obtain a sufficient number of bids from underwriters or purchasers or groups thereof.
2. To accelerate, postpone, or cancel the scheduled date and time for receipt of bids.
3. To reject all bids submitted.
4. To request the resubmission of bids.
5. To reschedule subsequent receipt of bids.

³³ Because the Competitive Bidding Rule applies only to utilities that have ratings of “A” or higher, PG&E might not competitively bid such fixed-rate bonds and debentures until it meets the minimum bond rating threshold.

6. To vary the amount, terms, and conditions of the Debt Securities submitted for bids.
7. To waive the requirement for newspaper publication of the above items.

ii. Discussion

We grant PG&E's request for the previously described exemptions from, and modifications to, the Competitive Bidding Rule. We do so based on (1) the fact that the Commission has routinely granted PG&E and other utilities similar exemptions and modifications³⁴ with no discernable adverse impacts on the utilities, their customers, or the public at large; and (2) PG&E's representation that granting the exemptions and modifications will enable PG&E to obtain debt in a manner advantageous to PG&E and its ratepayers. This Opinion makes no finding regarding the reasonableness of the rates, terms, and conditions of debt issued by PG&E pursuant to the exemptions and modifications granted herein.

G. Use of Subsidiaries

i. PG&E's Request

PG&E requests authority to issue Debt Securities through a type of subsidiary known as a special purpose entity (SPE) when cost savings may be achieved by doing so. Such an entity would be wholly-owned by PG&E and similar to PG&E's existing SPEs.³⁵

³⁴ See, for example, D.04-04-051, OP 4; D.04-01-009, OP 9; D.03-12-004, OP 11; D.03-11-018, OP 11; and D.03-09-020, OP 5.

³⁵ PG&E represents that it has two existing SPEs that are similar to those proposed in A.04-05-041. These are: (1) PG&E Funding LLC, the underlying borrower used to issue the Rate Reduction Bonds authorized by D.97-09-055; and (2) PG&E Accounts Receivable Company LLC, which purchases PG&E's accounts receivable in the accounts receivable working capital financing facility authorized by D.02-11-030, as modified by D.04-01-024. In

Footnote continued on next page

PG&E explains that using an SPE to issue debt can reduce the cost of debt when lenders are willing to charge lower interest rates to an SPE that is structurally and legally isolated from the credit risk of the parent utility. In such cases, the interest rate charged by the lender would be based on the credit quality of utility assets that are pledged or sold to the SPE, such as customer accounts receivable, rather than the credit quality of the utility.

Section 701.5 prohibits utilities from issuing bonds, notes, guaranteeing financial transactions, or pledging utility assets on behalf of their subsidiaries, but allows exceptions for transactions that are “for or on behalf of a subsidiary if its revenues and expenses are included by the commission in establishing rates for the [utility].” PG&E maintains that any SPE used in connection with debt issued pursuant to today’s Opinion would satisfy the requirements of Section 701.5. PG&E adds that the Commission would have regulatory authority over any SPE created pursuant to today’s Opinion, and that the SPE’s assets, debt, and equity would be included on PG&E’s consolidated balance sheet.

ii. Discussion

PG&E’s request to issue debt through subsidiary SPEs is subject to Section 701.5 which states, in relevant part, as follows:

Section 701.5: [N]o 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.... The commission may, however, authorize an electrical, gas, or telephone corporation to issue any bond, note, lien, guarantee, or

A.04-07-032, PG&E requests authority to create a new SPE to issue the Energy Recovery Bonds authorized by D.03-12-035 and SB 772.

indebtedness pledging the utility assets or credit...[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 interest of the utility and its ratepayers.

We conclude that it is in the public interest to grant PG&E authority under Section 701.5 to issue Debt Securities authorized by today's Opinion through a subsidiary or other SPE when doing so lowers the cost of debt for PG&E and its ratepayers.³⁶ As required by Section 701.5(a), the assets, liabilities, revenues, and expenses of any SPEs established by PG&E pursuant to today's Opinion shall be used by the Commission in setting rates for PG&E. Thus, the SPEs shall be treated as a "regulated subsidiary" for the purpose of applying the Commission's rules for affiliate transactions.³⁷ In addition, PG&E must have 100% ownership and control of the SPEs. The Commission shall also have regulatory control over the SPEs and access to the books and records of the SPEs. Finally, PG&E shall not make any profit from the SPEs, except for an authorized return on PG&E's reasonable equity investment in the rate base of the SPEs.

³⁶ The Commission granted similar authority in D.95-09-023, D.95-04-024, and D.94-07-062.

³⁷ A "regulated subsidiary" is defined as "any subsidiary of a utility the revenues and expenses of which are subject to regulation by the Commission and are included by the Commission in establishing the rates for the utility." (D.93-02-019, 48 CPUC 2d 163, 173. See also R.01-01-001, 2001 Cal. PUC Lexis 46, *25.)

H. General Order 24-B**i. PG&E's Request**

General Order (GO) 24-B requires utilities to submit a monthly report to the Commission that contains, among other things, the following information: (1) the amount of debt and preferred stock issued by the utility during the previous month; (2) the total amount of debt and preferred stock outstanding at the end of the prior month; (3) the purposes for which the utility expended the proceeds realized from the issuance of debt and preferred stock during the prior month; and (4) a monthly statement of the separate bank account that the utility is required to maintain for all receipts and disbursements of money obtained from the issuance of debt and preferred stock. To minimize administrative costs, PG&E requests permission to report to the Commission on a quarterly basis all the information required by GO 24-B for any debt and preferred stock issued by PG&E pursuant to this Opinion.

ii. Discussion

In recent years the Commission has routinely authorized utilities to report on a quarterly basis the information required by GO 24-B in order to reduce the utilities' administrative and compliance costs.³⁸ Therefore, consistent with Commission practice, we will authorize PG&E to report on a quarterly basis all the information required by GO 24-B regarding any debt and preferred stock issued pursuant to this Opinion. However, PG&E shall report this information on a monthly basis if directed to do so by Commission staff.

³⁸ See, for example, D.04-04-041, OP 5; D.04-01-009, OP 11; D.03-12-052, OP 6; D.03-12-004, OP 13; D.03-11-018, OP 13; and D.03-09-020, OP 6.

I. Matters Not Addressed

Today's Opinion does not address the following matters: (1) PG&E's capital structure; (2) the reasonableness of any expenditures made by PG&E with the proceeds of the debt and preferred stock authorized by this Opinion; (3) the ratemaking treatment of the costs associated with the debt, preferred stock, and other financial instruments issued by PG&E pursuant to today's Opinion; and (4) the reasonableness of any costs, terms, or conditions of any debt, preferred stock, and other financial instruments issued by PG&E pursuant to today's Opinion. These matters will be addressed in other proceedings.

5. Fees

Whenever the Commission authorizes a utility to issue debt and preferred stock, the Commission is required to charge and collect a fee in accordance with Sections 1904(b) and 1904.1, which provide, in relevant part, as follows:

Section 1904(b): For a certificate authorizing an issue of bonds, notes, or other evidences of indebtedness, two dollars (\$2) for each one thousand dollars (\$1,000) of the face value of the authorized issue or fraction thereof up to one million dollars (\$1,000,000), one dollar (\$1) for each one thousand dollars (\$1,000) over one million dollars (\$1,000,000) and up to ten million dollars (\$10,000,000), and fifty cents (\$0.50) for each one thousand dollars (\$1,000) over ten million dollars (\$10,000,000), with a minimum fee in any case of fifty dollars (\$50). **No fee need be paid on such portion of any such issue as may be used to guarantee, take over, refund, discharge, or retire any stock, bond, note or other evidence of indebtedness on which a fee has theretofore been paid to the commission.** If the commission modified the amount of the issue requested in any case and the applicant thereupon elects not to avail itself of the commission's authorization, no fee shall be paid, and if such fee is paid prior to the issuance of such certificate by the commission, such fee shall be returned. (Emphasis added.)

Section 1904.1: The commission shall also charge and collect a fee for a certificate authorizing an issue of stock, which fee shall be computed at the rates set forth in subdivision (b) of Section 1904 and determined by the commission upon the basis of the proposed maximum proceeds. **No fee shall be paid on such portion of any such issue as may be used to guarantee, take over, refund, discharge, or retire any stock, bond, note, or other evidence of indebtedness on which a fee has theretofore been paid to the commission.**

(Emphasis added.)

The following table shows the calculation of the fee that PG&E is required to pay pursuant to Sections 1904(b) and 1904.1 for the debt and preferred stock authorized by today's Opinion:

Step 1: Amount of Debt & Preferred Stock on which the Fee is Owed	
Short-Term Debt	\$500,000,000
Long-Term Debt	\$1,453,000,000
Preferred Stock	\$85,000,000
Subtotal	\$2,038,000,000
Less: Refinanced Bridge Loan ¹	(\$454,000,000)
Less: Retired Preferred Stock ²	(\$76,000,000)
Net Debt & Equity Subject to Fee	\$1,508,000,000
Step 2: Computation of Fee	
Fee on First \$1 Million	\$2,000
Fee on \$2 Million - \$10 Million	\$9,000
Fee on \$10 Million to \$1,508 Billion	\$754,000
Total Fee	\$765,000
Note 1: PG&E paid the Section 1904(b) fee pursuant to D.03-04-035 & D.04-01-024.	
Note 2: PG&E paid the Section 1904.1 fee pursuant to D.87-12-002 & D.93-06-082.	

PG&E shall remit the required fee of \$765,000 to the Commission's Fiscal Office. The authority granted by today's Opinion shall not become effective until PG&E has paid the required fee.

6. California Environmental Quality Act

Under the California Environmental Quality Act (CEQA) and Rule 17.1 of the Commission's Rules of Practice and Procedure (Rules), we must consider the environmental consequences of projects that are subject to our discretionary approval.³⁹ Thus, in deciding whether to approve A.04-05-041, we must consider if doing so will alter an approved project, result in new projects, change operations, etc., in ways that have an environmental impact.

PG&E intends to use \$1.008 billion of long-term debt and preferred stock authorized by this Opinion to finance capital expenditures during 2005 – 2008.⁴⁰ PG&E estimates that its total capital expenditures during this period will exceed \$6.5 billion.⁴¹ However, PG&E represents that it cannot identify the specific capital expenditures that will be financed with the long-term debt and preferred stock issued pursuant to this Opinion. According to PG&E, there is not a direct connection between the issuance of debt and equity and a specific use of proceeds. PG&E asserts that on the day the proceeds from the issuance are received, the cash will be mingled with PG&E's other cash and disbursed as needed.⁴² PG&E states that to the extent that capital expenditures are financed with the proceeds of the long-term debt and preferred stock issued pursuant to

³⁹ Pub. Resources Code Section 21080.

⁴⁰ PG&E Supplement filed on July 16, 2004, response to Question 9, Schedules II(1) and III(1).

⁴¹ *Ibid.*, Schedule II.

⁴² PG&E Supplement filed on August 19, 2004, response to Question 1.a.

this Opinion, CEQA review will occur as needed when PG&E goes through the regulatory processes applicable to each capital project.⁴³

We are skeptical of PG&E's claim that it cannot identify any specific capital expenditures that will be financed with the long-term debt and preferred stock authorized by today's Opinion. As a large utility, PG&E must plan and budget for many different capital programs, ranging from the routine replacement of utility poles and pipelines, to the replacement of nuclear steam generators. It is hard for us to believe that PG&E's planning and budgeting for capital expenditures does not consider how the capital expenditures will be financed.

To ensure compliance with CEQA, we will require PG&E to file by December 31st of each year an annual informational advice letter that lists and describes the specific capital expenditure programs that will be financed during the following year with the proceeds from the long-term debt and preferred stock authorized by today's Opinion. This requirement will end when all the long-term debt and preferred stock authorized by this Opinion has been issued and proceeds expended. The capital expenditure programs listed in the advice letter shall be divided into two categories. The first category shall consist of all capital expenditure programs that do not require any additional Commission approval pursuant to Section 851, Sections 1001 et seq., or GO 131-D. For each program listed in the first category, PG&E shall identify the exact reason(s) why no additional CEQA review is required. PG&E may use the proceeds from the long-term debt and preferred stock authorized by today's Opinion to fund programs in the first category without additional authority from the Commission.

⁴³ PG&E Supplement filed on August 19, 2004, response to Question 1.b.

The second category shall consist of capital expenditure programs that require Commission approval and CEQA review in a proceeding initiated pursuant to Section 851, Sections 1001 et seq., or GO 131-D. PG&E may not use the long-term debt and preferred stock authorized by today's Opinion to fund these programs until (1) the Commission has approved these programs pursuant to Section 851, Sections 1001 et seq., or GO 131-D, and (2) the Commission (or other lead agency) has completed any attendant CEQA review.

Pursuant to Section 824 and GO 24-B, we will require PG&E to maintain records which demonstrate that the only capital expenditure programs funded, in whole or in part, with the long-term debt and preferred stock authorized by today's Opinion are those that have received all necessary CEQA approvals. If PG&E is unable to identify specific capital expenditure programs funded with the long-term debt and preferred stock authorized herein, we will assume that the debt and preferred stock issued pursuant to today's Opinion have been used to fund an annual amount of capital expenditures shown in Appendix A of this Opinion,⁴⁴ and that the capital expenditures shown in Appendix A have been allocated pro rata among all of PG&E's capital expenditure programs funded during the year.

7. Category and Need for Hearings

In Resolution ALJ 176-3135, dated June 9, 2004, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that an evidentiary hearing would not be necessary. Based on the

⁴⁴ Appendix A shows that PG&E anticipates that it will use the long-term debt and preferred stock authorized by this Opinion to fund \$324 million of capital expenditure program in 2005, \$137 million in 2006, \$303 million in 2007, and \$244 million in 2008.

record of this proceeding, we affirm that this is a ratesetting proceeding and that a hearing is not necessary.

8. Comments on the Draft Decision

The draft decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Section 311(g)(1) and Rule 77.7. Comments on the draft decision were filed by _____ on _____, 2004. These comments have been reflected, as appropriate, in the final decision adopted by the Commission.

9. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Timothy Kenney is the assigned ALJ in this proceeding.

Findings of Fact

1. PG&E is currently authorized by D.04-01-024 to issue \$1.5 billion of short-term debt. Of this amount, \$850 million is for cash borrowing and \$650 million is for letters of credit to support energy procurement and workers' compensation.

2. In A.04-05-041, PG&E requests authority to issue an additional \$500 million of short-term debt, for total short-term debt authority of \$2 billion, including amounts allowed by Section 823(c). PG&E proposes that the \$2 billion be divided evenly between cash borrowing and collateral for energy procurement transactions. PG&E's request, if granted, would supersede PG&E's authority to issue short-term debt under D.04-01-024.

3. Prior to the energy crisis in late 2000 and PG&E's bankruptcy in early 2001, PG&E's outstanding short-term debt varied on a monthly basis between zero (\$0) and \$1.096 billion.

4. PG&E's existing authority to issue \$1.5 billion of short-term debt is sufficient to satisfy PG&E's financial needs under normal circumstances.

5. PG&E may have a need to issue more than \$1.5 billion of short-term debt if certain types of extraordinary circumstances occur, such as (i) a major natural disaster that disrupts PG&E's ability to bill and collect, and (ii) significant increases in the price of wholesale gas or electricity.

6. It is prudent for PG&E to maintain financial reserves to cope with extraordinary events like those identified in the previous Finding of Fact.

7. Authorizing PG&E to issue \$500 million of short-term debt when extraordinary events occur will provide PG&E with adequate financial reserves to cope with many scenarios.

8. As PG&E's credit ratings improve, PG&E's need to provide collateral to support energy procurement transactions should decline.

9. In A.04-05-041, PG&E requests authority to issue \$2 billion of long-term debt and \$200 million of preferred stock.

10. PG&E has demonstrated that it has a reasonable need to issue \$1.453 billion of long-term debt and \$85 million of preferred stock during 2004 – 2008 for the following purposes that are not reasonably chargeable to operating expenses or income: (i) finance \$1.008 billion of capital expenditures; (ii) retire \$0.454 billion of long-term debt; and (iii) redeem \$0.076 billion of preferred stock.

11. PG&E has not demonstrated that it has a need to issue \$547 million of long-term debt and \$115 million of preferred stock to finance (i) new generation, (ii) advanced metering infrastructure, (iii) expenditures that will be paid with the proceeds from PG&E's upcoming Energy Recovery Bonds, or (iv) anything else.

12. PG&E does not request evergreen authority to issue long-term debt and preferred stock.

13. In A.04-05-041, PG&E requests authority under Section 851 to (i) issue contingent FMBs to secure the debt requested in A.04-05-041, excluding FMBs issued as primary, and not contingent, obligations of PG&E; and (ii) use its accounts receivable to secure its debt.

14. PG&E represents that it might be required by lenders to secure most of its debt issued pursuant to today's Opinion with a like amount of FMBs.

15. The following Commission decisions authorized PG&E to pledge its gas accounts receivable for the sole purpose of procuring gas supplies for PG&E's core customers, including flowing gas and storage gas: D.04-02-056, D.03-02-061, D.02-03-025, D.01-06-074, D.01-02-050, and D.01-01-062.

16. It was fortunate that PG&E's gas accounts receivable were available to be used as collateral for the procurement of gas for PG&E's customers during PG&E's bankruptcy. If PG&E's gas accounts receivable had already been pledged as collateral for other purposes, it is possible that PG&E would not have been able to procure adequate supplies of gas for its customers, thereby causing gas shortages with potentially disastrous consequences for California.

17. In A.04-05-041, PG&E requests authority to issue many different types of Debt Securities and preferred stock using a wide variety of means.

18. There are many different types of debt and preferred stock available in global financial markets. Providing PG&E with discretion to choose among the many different types and the many ways to issue debt and preferred stock will enhance PG&E's ability to obtain capital at the lowest possible cost to PG&E and its ratepayers.

19. In A.04-05-041, PG&E requests that credit enhancements not be counted against its authorized debt.

20. In the following decisions, the Commission did not count credit enhancements against authorized debt: D.04-01-009, D.03-12-004, D.03-07-029, D.03-07-008, and D.03-04-030.

21. In A.04-05-041, PG&E requests authority to use interest-rate caps, collars, swaps, hedges, and other financial instruments to manage the risks associated with interest rate volatility. PG&E also requests that its use of these financial instruments not be counted against its authorized debt.

22. In the following decisions, the Commission authorized utilities to use interest-rate caps, collars, swaps, hedges, and other financial instruments to manage interest rate risks: D.03-12-004, D.96-05-066, and D.95-09-023.

23. Under certain circumstances, PG&E is required by GAAP to report hedges on its balance sheet as assets and/or liabilities.

24. Resolution F-616 requires utilities to issue debt using competitive bids. The Resolution also provides for exemptions from the Competitive Bidding Rule for debt issues in excess of \$200 million and debt that must be obtained on a negotiated basis such as variable-rate debt.

25. In the following decisions, the Commission granted exemptions from, and modifications to, the Competitive Bidding Rule: D.04-04-051, OP 4; D.04-01-009, OP 9; D.03-12-004, OP 11; D.03-11-018, OP 11; and D.03-09-020, OP 5. There is no evidence in this proceeding that these exemptions and modifications have caused any harm to utilities, ratepayers, or the public at large.

26. PG&E represents that granting the requested exemptions from, and modifications to, the Competitive Bidding Rule will enable PG&E to obtain debt in a manner that is advantageous to PG&E and its ratepayers.

27. PG&E requests authority to issue Debt Securities through an SPE when cost savings may be achieved by doing so. The SPE would be a wholly-owned by PG&E and similar to PG&E's existing SPEs.

28. GO 24-B requires utilities to submit a monthly report to the Commission that contains, among other things, the following information: (i) the amount of debt and preferred stock issued by the utility during the previous month; (ii) the total amount of debt and preferred stock outstanding at the end of the prior month; (iii) the purposes for which the utility expended the proceeds realized from the issuance of debt and preferred stock during the prior month; and (iv) a monthly statement of the separate bank account that the utility is required to maintain for all receipts and disbursements of money obtained from the issuance of debt and preferred stock.

29. To minimize administrative costs, PG&E requests permission to report to the Commission on a quarterly basis all the information required by GO 24-B for any debt and preferred stock issued by PG&E pursuant to this Opinion.

30. In recent years the Commission has routinely authorized utilities to report on a quarterly basis the information required by GO 24-B in order to reduce the utilities' administrative and compliance costs.

31. PG&E intends to use \$1.008 billion of long-term debt and preferred stock authorized by this Opinion to finance capital expenditures during 2005 – 2008.

32. PG&E represents that it cannot identify the specific capital expenditures that will be financed with the long-term debt and preferred stock issued pursuant to this Opinion.

33. A.04-05-041 does not propose, and today's Opinion does not authorize, any specific new construction or changes in use of existing assets and facilities.

34. Notice of A.04-05-041 appeared in the Commission's Daily Calendar. There were no protests or other responses to A.04-05-041.

35. In Resolution ALJ 176-3135 issued on June 9, 2004, the Commission preliminarily determined that this proceeding should be categorized as ratesetting and that hearings would not be necessary.

36. There are no contested factual issues.

37. PG&E represents that the additional debt and preferred stock requested in A.04-05-041 is not subject to the Modified Settlement Agreement approved by D.03-12-035 or PG&E's POR. PG&E also represents that it does not need to provide notice to, or obtain permission from, the Commission's Financing Team before PG&E issues any of the debt and preferred stock requested in A.04-05-041.

Conclusions of Law

1. This is a ratesetting proceeding.
2. There is no need for hearings.
3. PG&E's request to issue the types and amount of debt, preferred stock, and financial instruments identified in A.04-05-041 is subject to Commission approval under Sections 701.5, 816 et seq., and 851. The Commission has broad discretion under these statutes to approve, modify, or reject A.04-05-041.
4. PG&E should be authorized to issue \$500 million of additional short-term debt, for total short-term debt authority of \$2 billion, including the amount authorized by Section 823(c). Of this amount, PG&E should maintain a reserve capacity to issue short-term debt in the amount of \$500 million that can only be used for the following purposes:
 - i. Finance the procurement of natural gas or electricity for PG&E's utility customers during price spikes, with the commencement of a "price spike" defined as an increase in gas or electricity of at least 50% over the average of the preceding 12 months.

- ii. Respond to major natural disasters or other cataclysms.
 - iii. Provide liquidity if there is a major disruption in PG&E's ability to bill, collect, and/or process utility customer bills.
5. PG&E should have authority to decide how to divide the \$2 billion of short-term debt authorized by this Opinion between cash borrowing and collateral for energy procurement transactions.
6. PG&E should adjust its short-term debt facilities as PG&E's need to provide collateral to support energy procurement transactions declines over time due to improvements in PG&E's credit ratings.
7. PG&E's authority to issue short-term debt pursuant to this Opinion supersedes PG&E's authority to issue short-term debt pursuant to D.04-01-024.
8. PG&E should be authorized to issue \$1.453 billion of long-term debt and \$85 million of preferred stock during 2004 – 2008 for the following purposes authorized by Section 817:
 - i. Finance \$1.008 billion of capital expenditures.
 - ii. Retire \$0.454 billion of long-term debt.
 - iii. Redeem \$0.076 billion of preferred stock.
9. Section 818 provides that no public utility may issue debt or equity unless it has first obtained from the Commission an order authorizing the issue, stating the amount thereof and the purposes to which the proceeds thereof are to be applied, and that, in the opinion of the Commission, the money, property, or labor to be procured or paid for by the issue is reasonably required for the purposes specified in the order, and that such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.
10. The money, property, and/or labor to be procured by PG&E with the proceeds of the debt and preferred stock authorized by this Opinion are

reasonably required for the purposes specified in this Opinion, and such purposes are not reasonably chargeable to operating expenses or income.

11. Section 818 requires that A.04-05-041 be denied to the extent it requests authority to issue \$547 million of additional long-term debt and \$115 million of additional preferred stock. This is because PG&E has not demonstrated, as required by Section 818, that it has a reasonable need to issue \$547 million of additional long-term debt and \$115 million of additional preferred stock.

12. Because this Opinion does not grant evergreen authority to issue long-term debt and preferred stock, PG&E will have to apply for appropriate authority to issue additional debt and/or equity when the long-term debt issued by PG&E pursuant to this Opinion matures and the preferred stock issued pursuant to this Opinion is redeemed.

13. Section 851 requires a public utility to obtain authority from the Commission prior to encumbering any utility property that is necessary or useful in the performance of the utility's duties to the public.

14. The purpose of Section 851 is to enable the Commission to review a proposed transaction, before it takes place, in order to take such action as the public interest may require.

15. PG&E's request for authority under Section 851 to issue FMBs as a credit enhancement for other debt is reasonable and should be granted. If a default occurs and title to PG&E's property is transferred pursuant to FMBs, the transferred property should continue to be used to provide utility services to the public until the Commission authorizes otherwise.

16. Payments by PG&E's customers should be used first and foremost for the procurement of gas and electricity provided to PG&E's customers.

17. PG&E's authority under Section 851 to pledge its gas customer accounts receivable should be limited to the sole purpose of procuring gas supplies for PG&E's customers, including flowing gas and storage gas. PG&E's authority to pledge its electric accounts receivable should be limited to the sole purpose of procuring electric power for PG&E's customers, including any gas and other fuels necessary for PG&E's retained generation plants.

18. The previous Conclusion of Law should not apply to the following: (i) the portion of PG&E's accounts receivable that are sequestered for other purposes pursuant to statutes or Commission orders (e.g., accounts receivable that have been or will be pledged to support PG&E's Rate Reduction Bonds or Energy Recovery Bonds), or (ii) PG&E's current credit facility of \$650 million that is secured by PG&E's accounts receivable. PG&E should not renew this credit facility when it expires so that the accounts receivable supporting the credit facility can be used for the purposes authorized by today's Opinion (i.e., to serve as collateral for the procurement of gas and electricity for PG&E's customers).

19. PG&E should be granted authority under Sections 816 et seq., to issue the types of Debt Securities and preferred stock described in A.04-05-041 using the means identified in the Application.

20. Credit enhancements such as letters of credit, mortgage bonds, bond insurance, etc., should not be counted against PG&E's authorized debt to the extent the credit enhancements do not increase the amount of debt owed by PG&E. Any credit enhancements that increase the amount of debt owed by PG&E should be counted against PG&E's authorized debt.

21. The following principles should apply to any hedges that PG&E enters into pursuant to this Opinion:

- i. PG&E should comply with the conditions enumerated in the body of this Opinion.
- ii. Hedges recorded as a liability under GAAP should not be counted against PG&E's authorized debt to the extent the hedge liabilities are offset by changes to the fair value or cash flows of the risks being hedged. Hedge liabilities that exceed the offsetting changes to the fair value or cash flows of the risks being hedged should be counted against PG&E's authorized debt.
- iii. Hedges recorded as an asset under GAAP that exceed the offsetting changes to the fair value or cash flows associated with the risks being hedged should not be used in the determination of PG&E's outstanding debt.

22. For the following reasons, PG&E's request for the Competitive Bidding Rule exemptions and modifications identified in the body of this Opinion and A.04-05-041 should be granted: (i) the Commission has previously granted PG&E and other utilities similar exemptions and modifications with no discernable adverse impacts on the utilities, their customers, or the public at large; and (ii) PG&E's representation that the exemptions and modifications will benefit PG&E and its ratepayers by enhancing PG&E's ability to issue debt in an advantageous manner.

23. PG&E should be granted authority under Section 701.5 to issue Debt Securities authorized by today's Opinion through an SPE when doing so results in lower cost of debt for PG&E and its ratepayers.

24. As required by Section 701.5(a), the assets, liabilities, revenues, and expenses of any SPEs established by PG&E pursuant to today's Opinion should be used by the Commission in setting rates for PG&E. In addition, PG&E should have 100% ownership and control of the SPEs, and Commission must have full regulatory control over the assets, debt, equity, and activities of the SPEs through the Commission's oversight of PG&E's financing activities.

25. Except for an authorized return on PG&E's reasonable equity investment in the rate base of the SPEs, PG&E should not profit from any SPEs established pursuant to this Opinion.

26. PG&E should be authorized to report on a quarterly basis all the information required by GO 24-B regarding any debt and preferred stock issued pursuant to this Opinion, except that PG&E should report this information on a monthly basis if directed to do so by Commission staff.

27. The appropriate regulatory treatment of the costs associated with the debt, preferred stock, and financial instruments authorized by today's Opinion should be decided by the Commission in PG&E's cost of capital proceedings or other appropriate proceedings.

28. PG&E is required by Sections 1904(b) and 1904.1 to pay a fee of \$765,000 for the debt and preferred stock authorized by today's Opinion.

29. The authority granted by this Opinion should not become effective until PG&E has paid the fees prescribed by Sections 1904(b) and 1904.1.

30. To ensure compliance with CEQA, PG&E should file by December 31st of each year an annual informational advice letter that lists and describes the specific capital expenditure programs that will be financed during the following year with the proceeds from the long-term debt and preferred stock authorized by this Opinion. This requirement should end when all the long-term debt and preferred stock authorized by this Opinion has been issued and the proceeds expended. The capital expenditure programs listed in the advice letter should be divided into the following two categories:

Category 1: All capital expenditure programs that do not require any additional Commission approval pursuant to Section 851, Sections 1001 et seq., or GO 131-D. For each program listed in this category, PG&E should identify the reason(s) why no additional

review is required under CEQA. PG&E should be able to use the proceeds from the long-term debt and preferred stock authorized by this Opinion to fund programs in this category without additional authority from the Commission.

Category 2: All capital expenditure programs that require Commission approval and CEQA review in a proceeding initiated pursuant to Section 851, Sections 1001 et seq., or GO 131-D. PG&E should not use the debt and preferred stock authorized by this Opinion to fund these programs until (i) the Commission has approved PG&E's request for authorization pursuant to Section 851, Sections 1001 et seq., or GO 131-D, and (ii) the Commission (or other lead agency) has completed any attendant CEQA review.

31. PG&E should be required to maintain records pursuant to Section 824 and GO 24-B that (i) identify the specific debt and preferred stock issued pursuant to this Opinion, (ii) demonstrate that the proceeds from such debt and preferred stock issued have been used only for the purposes authorized by this Opinion, and (iii) demonstrate that the only capital expenditures programs funded, in whole or in part, with the debt and preferred stock authorized by this Opinion are those that have received all necessary CEQA approvals.

32. The following Order should be effective immediately so that PG&E may issue as soon as possible the debt and preferred stock authorized herein.

O R D E R**IT IS ORDERED** that:

1. Except as described in the following Ordering Paragraphs, Application (A.) 04-05-041 is granted pursuant to Pub. Util. Code §§ 701.5, 816 - 830, and 851.

2. Pacific Gas and Electric Company (PG&E) is authorized to issue \$2 billion of short-term debt, including the amounts authorized by Section 823(c). Of this amount, PG&E shall maintain a reserve capacity to issue \$500 million of short-term debt that can only be used for the following purposes:

- i. Finance the procurement of natural gas and electricity for PG&E's utility customers during price spikes, with the commencement of a price spike defined as an increase in gas or electricity of at least 50% over the average of the preceding 12 months.
- ii. Respond to major natural disasters or other cataclysms.
- iii. Provide PG&E with liquidity during a major disruption of PG&E's ability to bill, collect, and/or process utility customer bills.

3. PG&E is authorized to issue \$1,453 billion of new long-term debt and \$85 million of preferred stock to (i) finance capital expenditures, (ii) refinance maturing bridge loans, and (iii) redeem preferred stock.

4. This Order does not grant evergreen authority to issue long-term debt and preferred stock. PG&E will have to apply for authority to issue additional debt and/or equity when the long-term debt issued by PG&E pursuant to this Order matures and the preferred stock issued pursuant to this Order is redeemed.

5. PG&E is granted authority under Section 851 to issue First Mortgage Bonds (FMBs) as security for debt issued pursuant to this Order. If a default occurs and title to PG&E's property is transferred pursuant to FMBs, the transferred

property shall continue to be used to provide utility services to the public until the Commission authorizes otherwise.

6. Except as noted in the next Ordering Paragraph, PG&E is granted authority pursuant to Section 851 to (i) pledge its gas accounts receivable for the sole purpose of procuring gas supplies for PG&E's customers, including flowing gas and storage gas, and (ii) pledge its electric accounts receivable for the sole purpose of procuring electric power for PG&E's customers, including any gas and other fuels necessary for PG&E's retained generation plants.

7. The previous Ordering Paragraph does not apply to the following: (i) the portion of PG&E's accounts receivable that are sequestered for other purposes pursuant to statutes or Commission orders, or (ii) the \$650 million credit facility that PG&E currently has in place that is secured by PG&E's accounts receivable. PG&E shall not renew the \$650 million credit facility when it expires so that the accounts receivables supporting the credit facility can instead be used for the purposes authorized by today's Order (i.e., to serve as collateral for the procurement of gas and electricity for PG&E's customers).

8. PG&E may issue the types of short-term debt, long-term debt, and preferred stock identified in A.04-05-041.

9. Credit enhancements of short-term or long-term debt authorized by this Order shall not count against the amount of debt authorized by this Order so long as there is no possibility that such credit enhancements will ever increase the amount of PG&E's debt obligations. Any credit enhancements that increase the amount of debt owed by PG&E shall count against PG&E's authorized debt.

10. PG&E may enter into interest-rate caps, collars, swaps, hedges, and other financial instruments to manage interest rate risks (collectively, "hedges") subject to the conditions adopted by this Order.

11. The following principles shall apply to any hedges that PG&E enters into pursuant to this Order:

- i. PG&E shall comply with the conditions enumerated in the body of this Order.
- ii. Hedges recorded as a liability under generally accepted accounting principles (GAAP) shall not be counted against PG&E's authorized debt to the extent the hedge liabilities are offset by changes to the fair value or cash flows of the risks being hedged. Hedge liabilities shall be counted against PG&E's authorized debt to the extent that such liabilities are not offset by changes to the fair value or cash flows associated with the risks being hedged.
- iii. Hedges recorded as an asset pursuant to GAAP shall not be used in the determination of PG&E's outstanding debt to the extent that such hedges are not offset by changes to the fair value or cash flows associated with the risks being hedged.

12. The following types of debt issued by PG&E pursuant to this Order are exempt from the Competitive Bidding Rule set forth in Resolution F-616: debt with a principal amount greater than \$200 million, variable-rate debt securities, and negotiated debt transactions.

13. PG&E is authorized to do the following in those situations where the Competitive Bidding Rule remains applicable:

- i. To shorten the time between the issuance of an invitation for bids and the receipt of bids to a period that is the shortest time reasonably required to obtain a sufficient number of bids from underwriters, purchasers, or groups thereof.
- ii. To accelerate, postpone, or cancel the scheduled date and time for receipt of bids.
- iii. To reject all bids submitted.
- iv. To request the resubmission of bids.
- v. To reschedule subsequent receipt of bids.

- vi. To vary the amount, terms, and conditions of the Debt Securities submitted for bids.
- vii. To waive the requirement for newspaper publication of the above items.

14. PG&E may issue the Debt Securities authorized by this Order through a special purpose entity (SPE) when doing so results in lower cost of debt for PG&E and its ratepayers. The assets, liabilities, revenues, and expenses of any SPEs established by PG&E pursuant to this Order shall be used by the Commission to set rates for PG&E. The SPEs shall be treated as “regulated subsidiaries” for the purpose of applying the Commission’s rules for affiliate transactions. PG&E shall have 100% ownership and control of the SPEs. The Commission shall have regulatory control over the SPEs and access to the books and records of the SPEs. PG&E shall not make any profit from the SPEs, except for an authorized return on PG&E’s reasonable equity investment in the SPEs.

15. PG&E may report on a quarterly basis all the information required by General Order (GO) 24-B with respect to debt and preferred stock issued pursuant to this Order. PG&E shall report this information on a monthly basis if directed to do so by Commission staff.

16. Pursuant to Sections 1904(b) and 1904.1, PG&E shall remit to the Commission’s Fiscal Office a check for \$765,000 for the debt and preferred stock authorized by this Order. The decision number of this Order shall appear on the face of the check.

17. The authority granted by this Order shall not become effective until PG&E remits \$765,000 to the Commission’s Fiscal Office.

18. PG&E shall file by December 31st of each year an annual informational advice letter that lists and describes the specific capital expenditure programs that will be financed during the following year with the proceeds from the long-

term debt and preferred stock authorized by this Order. This requirement shall end when all the long-term debt and preferred stock authorized by this Order has been issued and the proceeds expended. The capital expenditure programs listed in the advice letter shall be divided into the following two categories:

Category 1: All capital expenditure programs that do not require any additional Commission approval pursuant to Section 851, Sections 1001 et seq., or GO 131-D. For each program listed in this category, PG&E shall identify the exact reason(s) why no additional review is required under the California Environmental Quality Act (CEQA). PG&E may use the proceeds from the long-term debt and preferred stock authorized by this Order to fund programs in this category without additional authority from the Commission.

Category 2: All capital expenditure programs that require Commission approval and CEQA review in a proceeding initiated pursuant to Section 851, Sections 1001 et seq., or GO 131-D. PG&E may not use the debt and preferred stock authorized by this Order to fund these programs until (i) the Commission has approved PG&E's request for authorization pursuant to Sections 851, Sections 1001 et seq., or GO 131-D, and (ii) the Commission (or other lead agency) has completed any attendant CEQA review.

19. Pursuant to Section 824 and GO 24-B, PG&E shall maintain records that (i) identify the specific debt and preferred stock issued pursuant to this Order, (ii) demonstrate that the proceeds from the debt and preferred stock issued pursuant to this Order have been used only for the purposes authorized by this Order, and (iii) demonstrate that the only capital expenditures programs funded, in whole or in part, with the debt and preferred stock authorized by this Order are those that have received all necessary CEQA approvals.

20. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.