

**DRAFT**

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**  
**ENERGY DIVISION**  
**I. D. #3038**  
**RESOLUTION E-3859**  
**DECEMBER 18, 2003**

**R E S O L U T I O N**

**Resolution E-3859. Pacific Gas and Electric Company requests approval of amendment No. 6 of the Qualified Decommissioning Trust Agreement and amendment No. 3 of the Nonqualified Decommissioning Trust Agreement pursuant to Section 2.12 of the Qualified Trust Agreement and Section 2.10 of the Nonqualified Trust Agreement. The amendments are for the Diablo Canyon generating station and Humboldt Bay nuclear unit No. 3, and reflect the changes required by the Nuclear Regulatory Commission.**

**Request granted.**

**By Advice Letter 2444-E filed on November 21, 2003.**

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**SUMMARY**

This Resolution approves Pacific Gas and Electric Company (PG&E) amendment No. 6 of the Qualified Decommissioning Trust Agreement and amendment No. 3 of the Nonqualified Decommissioning Trust Agreement pursuant to Section 2.12 of the Qualified Trust Agreement and Section 2.10 of the Nonqualified Trust Agreement. The amendments are for the Diablo Canyon generating station and Humboldt Bay nuclear unit No. 3, and reflect the changes required by the Nuclear Regulatory Commission.

The Executive Director is authorized to sign the amendments on behalf of the Commission.

**BACKGROUND**

In its Order Instituting Investigation No. 86, the Commission conducted an extensive investigation into the alternative methods of financing the cost of decommissioning nuclear power plants owned by California utilities. In

Decision (D) 87-05-062, the Commission adopted externally managed trust funds as vehicles for accruing decommissioning funds. In that decision, the Commission also established guidelines for preparing these trust agreements.

In response to D.87-05-062, PG&E established two trust funds: one to hold contributions that *qualify* for an income tax deduction under Section 468A of the Internal Revenue Code (qualified trust), and another to hold the remaining funds (non-qualified trust). On November 25, 1987, the Commission approved the PG&E trust agreements by Resolution E-3048. The Trust Agreements have been amended and restated from time to time thereafter with Commission approval.

The Commission has set forth its limitations on the nuclear utilities' trust funds in a series of decisions. Ordering Paragraph 6 of D.95-07-055 provides for the agreements to be approved through the Commission advice letter process. Sections 2.12 and 2.10 of the qualified and nonqualified trust agreements, respectively, require Commission approval of amendments to the Trust Agreements.

By this advice letter PG&E is requesting Commission approval of the proposed amendments to the Trust Agreements, provided in attachment A of AL 2444-E. The amendments incorporate changes intended to address the new notice requirement of the revised Nuclear Regulatory Commission (NRC) regulations. The amendments were approved at the November 21, 2003 meeting of PG&E's Nuclear Facilities Decommissioning Master Trust Committee (Committee). The amendments would apply to Diablo Canyon generating station and Humboldt Bay nuclear unit 3.

## **NOTICE**

Notice of AL 2444-E was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section III-G of General Order 96-A.

## **PROTESTS**

AL 2444-E was not protested.

## **DISCUSSION**

On December 24, 2002, the NRC published revisions to **10 CFR 50.75**, which provide new guidance in the management of decommissioning trust funds. Decommissioning trust agreements must be amended to reflect the new provisions by December 24, 2003, one year after appearing in the Federal Register. The new requirements are largely a result of deregulation and the NRC's concern that some decommissioning trusts may no longer be subject to state regulatory oversight. However, since PG&E is an "electric utility" as defined in **10 CFR 2**, the new regulations have minimal impact on PG&E's Trust Agreements. In such cases, the Trust Agreements must only be amended to include a requirement that no withdrawal will be made from the trusts unless the NRC is notified at least 30 days in advance and no written objections from the NRC is received during the 30-day period. This notice requirement, however, does not apply if the withdrawal is made for decommissioning or trust administration expenses. PG&E's Trust Agreements already provide that the trust assets may only be used for such expenses.

The Energy Division has reviewed PG&E's AL 2444-E and the proposed amendments to the Trust Agreements and determined that they are in compliance with the applicable Commission requirements as ordered in D.87-05-062 and D.95-07-055. Accordingly, the Energy Division recommends approval of PG&E's request.

## **COMMENTS**

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

## **FINDINGS**

1. Pacific Gas and Electric Company filed Advice Letter 2444-E on November 21, 2003 requesting approval of amendments to its nuclear decommissioning trust agreements. The amendments reflect the changes required by Nuclear Regulatory Commission effective December 24, 2003.

2. Decision 87-05-062 requires externally managed trust funds to finance the decommissioning of nuclear power plants.
3. Decision 95-07-055 requires that all trust investment management agreements be approved by the Commission through the advice letter process.
4. In its November 21, 2003 meeting, PG&E's Nuclear Facilities Decommissioning Master Trust Committee approved the proposed amendments to the Trust Agreements.
5. The amendments to the Trust Agreements as proposed in AL 2444-E are in compliance with applicable Commission requirements and should be approved.

**THEREFORE IT IS ORDERED THAT:**

1. Pacific Gas and Electric Company's request in Advice Letter 2444-E is approved.
2. The Commission's Executive Director is authorized to sign the Master Trust amendments on behalf of the Commission.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on December 18, 2003; the following Commissioners voting favorably thereon:

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WILLIAM AHERN  
Executive Director