

**Mailed April 8, 2005**

Decision 05-04-023 April 7, 2005

**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 GRANTING PACIFIC GAS AND ELECTRIC COMPANY'S  
PETITION TO MODIFY DECISION 04-10-037**

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## **O P I N I O N**

### **1. Summary**

This Opinion grants Pacific Gas and Electric Company's (PG&E's) petition to modify Decision (D.) 04-10-037. The specific modifications to D.04-10-037 are as follows. First, we remove the specific financing order condition that long-term debt and preferred stock issued pursuant to D.04-10-037 must result in a capital structure that complies, on average, with the Commission-adopted capital structure during the period the adopted capital structure is in effect for ratemaking purposes. PG&E's long-term debt and preferred stock will not be voided if PG&E fails to maintain its capital structure in accordance with Commission requirements. Second, PG&E may use the long-term debt and preferred stock authorized by D.04-10-037 for every purpose listed in Pub. Util. Code § 817.<sup>1</sup> Third, long-term debt and preferred stock that is issued pursuant to D.04-10-037 may be secured by PG&E's accounts receivable. Fourth, PG&E may renew its accounts receivable credit facility when it expires in 2007. Finally, Ordering Paragraph (OP) 6 is corrected to provide PG&E with authority to issue First Mortgage Bonds as primary obligations.

### **2. Background**

Decision 04-10-037 authorized PG&E to do a number of things pursuant to §§ 701.5, 816 - 830, and 851, including the following:

1. Issue \$1.538 billion of long-term debt and preferred stock in any combination, as long as the selected combination results in a capital structure that complies with Commission requirements.
2. Use the \$1.538 billion of authorized long-term debt and preferred stock for only the following purposes:

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<sup>1</sup> All statutory references are to the Public Utilities Code unless otherwise indicated.

- a. Finance capital expenditures.
  - b. Retire long-term debt.
  - c. Redeem preferred stock.
3. Pledge gas and electric accounts receivable for the purpose of procuring gas and electricity for PG&E's customers.
4. Issue contingent First Mortgage Bonds as security for other debt.

On November 29, 2004, PG&E filed a petition to modify D.04-10-037.

Notice of the petition appeared in the Commission's Daily Calendar on December 1, 2004. There were no protests or other responses to the petition.

PG&E's petition is subject to Commission approval pursuant to §§ 816 *et seq.*, and 851. The Commission has broad discretion under these statutes to approve, modify, or reject PG&E's petition.

### **3. PG&E's Petition to Modify D.04-10-037**

PG&E requests four modifications to D.04-10-037. Each of the requested modifications is addressed below.

#### **i. Compliance with the Authorized Capital Structure**

##### **a. PG&E's Request**

Decision 04-10-037 authorized PG&E to issue \$1.538 billion of long-term debt and preferred stock, in any combination, as long as the selected combination results in a capital structure that complies, on average, with the Commission-adopted capital structure during the period the adopted capital structure is in effect.<sup>2</sup> PG&E requests that this condition be rescinded.

PG&E asserts that conditioning its authority to issue debt and equity on compliance with the Commission-adopted capital structure creates the possibility

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<sup>2</sup> D.04-10-037, *mimeo.*, p. 16 and OP 4.

that securities issued in compliance with D.04-10-037 might subsequently fall out of compliance due to unexpected events.<sup>3</sup> As a result, PG&E may not be able to obtain the required legal opinions regarding “due authorization” and “validity” that are necessary for securities to be sold to the public.

PG&E also observes that under § 825, utility debt and equity may be deemed void if it does not comply with a Commission order.<sup>4</sup> PG&E represents that it will have to disclose to potential investors the risk that debt and equity issued pursuant to D.04-10-037 might fall out of compliance and be deemed void. PG&E believes this risk will cause investors to demand a higher return, thereby resulting in higher costs for PG&E and its ratepayers.

#### **b. Discussion**

We agree with PG&E that investors might interpret the specific financing order condition in D.04-10-037 that PG&E remain in compliance with its authorized capital structure as requiring that long-term debt and preferred stock issued pursuant to the Decision be deemed void if PG&E fails to maintain its capital structure in accordance with Commission requirements. The possibility that long-term debt and preferred stock might be deemed void could increase investors’ perception of risk, thereby resulting in higher cost of capital for PG&E and its ratepayers with no offsetting benefit. To foreclose this possibility, we will modify D.04-10-037 by removing the condition so that it is clear that long-term debt and preferred stock issued pursuant to the Decision will not be deemed void

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<sup>3</sup> For example, the Financial Accounting Standards Board could adopt a new accounting standard that alters PG&E’s capital structure.

<sup>4</sup> Section 825 states, in relevant part, as follows: “All [stock and debt]...of a public utility, issued without an order of the commission...or not conforming...to any of the provisions which it is required by the order of authorization to contain, is void.”

if PG&E fails to maintain its capital structure in accordance with Commission requirements.<sup>5</sup>

## **ii. Authorized Uses of Long-Term Debt and Preferred Stock**

### **a. PG&E's Request**

Decision 04-10-037 authorizes PG&E to issue \$1.538 billion of long-term debt and preferred stock for three purposes: finance capital expenditures, retire bridge loans, and redeem preferred stock. PG&E requests that D.04-10-037 be modified to allow PG&E to use the long-term debt and preferred stock authorized by the Decision for every purpose listed in § 817.<sup>6</sup>

PG&E argues that its request is consistent with Commission precedent for PG&E and other utilities. PG&E contends that if the Commission intends to implement a new and more restrictive approach, it should do so in a rulemaking proceeding and apply it to all utilities.

PG&E also claims that limiting its use of long-term debt and preferred stock may have unintended consequences. For example, PG&E might miss an opportunity to refinance existing debt if PG&E must apply for authority to use

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<sup>5</sup> Our decision to hold investors harmless is consistent with § 825 which states, in relevant part, as follows: "No failure in any other respect to comply with the terms or conditions of the order of authorization of the commission shall render void any [long-term debt or preferred stock]...except as to a corporation or person taking it otherwise than in good faith and for value and without actual notice."

<sup>6</sup> Under § 817, the Commission may authorize a public utility to issue long-term debt and preferred stock for the following purposes: (a) acquire property; (b) construct, complete, extend, or improve its facilities; (c) improve or maintain its service; (d) discharge or lawfully refund its obligations; (e) finance the acquisition and installation of electrical and plumbing appliances and agricultural equipment which are sold by other than a public utility, for use within the service area of the public utility; (f) reorganize or readjust its debt or capitalization upon a merger, consolidation, or other reorganization; (g) retire or replace outstanding debt or equity; and (h) reimburse previous expenditures for the aforesaid purposes, except maintenance of service and replacements, where the money for such expenditures was not secured by or obtained from the issuance of stocks or debt.

the \$1.538 billion for other purposes. PG&E also notes that it often uses short-term debt to temporarily fund some of its capital expenditures, and then replaces the short-term debt with long-term financing. However, the restrictive purposes for which long-term debt and preferred stock may be issued under D.04-10-037 would not allow PG&E to do this.

**b. Discussion**

We grant PG&E's request to modify D.04-10-037 to allow PG&E to use the long-term debt and preferred stock authorized by the Decision for every purpose listed in § 817. The adopted modification is consistent with Commission precedent, and we see no reason to depart from precedent here.

**iii. Authority to Encumber Accounts Receivable**

**a. PG&E's Request**

PG&E has a \$650 million accounts receivable (A/R) facility that provides for the continuous sale of PG&E's accounts receivable and functions as a line of credit. The A/R facility expires in 2007. Decision 04-10-037 denied PG&E's request for general authority to issue debt secured by its accounts receivable and ordered PG&E not to renew its A/R facility when it expires in 2007.<sup>7</sup>

In its petition, PG&E asks the Commission to modify D.04-10-037 to allow PG&E to (1) issue debt secured by its accounts receivable, and (2) renew its A/R facility when it expires in 2007. PG&E represents that its A/R facility is currently PG&E's least expensive short-term debt facility. PG&E also argues that because other utilities have been authorized to use accounts receivable to secure debt, it is unfair to withhold the same authority from PG&E.

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<sup>7</sup> D.04-10-037, *mimeo.*, pp. 20 – 21.

**b. Discussion**

We grant PG&E's request to modify D.04-10-037 to allow PG&E to (1) issue debt secured by its accounts receivable, and (2) renew its A/R facility when it expires in 2007. We do so with the expectation that the modification will enable PG&E to issue debt at the lowest possible cost for its ratepayers. We also agree with PG&E that because other utilities have been authorized to use their accounts receivable to secure debt, PG&E should be granted the same authority.

**iv. Modification of Ordering Paragraph 6**

**a. PG&E's Request**

Finding of Fact (FOF) 14 and Conclusion of Law (COL) 17 of D.04-10-037 indicate that PG&E should be granted authority under § 851 to issue First Mortgage Bonds (FMBs) as both primary obligations and as security for other debt. However, Ordering Paragraph (OP) 6 only provides authority to issue FMBs as security for other debt. PG&E requests that OP 6 be modified to provide PG&E with authority to issue FMBs as primary obligations.

**b. Discussion**

It was our intent in D.04-10-037 that PG&E should be authorized to issue FMBs as primary obligations and as security for other debt. Our intent is properly reflected in FOF 14 and COL 17. However, OP 6 only provides authority to issue FMBs as security for other debt; OP 6 inadvertently omits authority to issue FMBs as primary obligations. Therefore, we will modify OP 6 to provide PG&E with authority to issue FMBs as primary obligations.

**4. Comments on the Draft Opinion**

The draft Opinion of the Assigned Commissioner in this matter was mailed to the service list in accordance with § 311(g)(1) and Rule 77.7. Comments were filed on a timely manner by Pacific Gas and Electric Company.



## **5. Assignment of Proceeding**

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

### **Findings of Fact**

1. Decision 04-10-037 authorized PG&E to issue \$1.538 billion of long-term debt and preferred stock, in any combination, as long as the selected combination results in a capital structure that complies, on average, with the Commission-adopted capital structure during the period the adopted capital structure is in effect. PG&E's petition requests that this condition be rescinded.

2. Investors might interpret D.04-10-037 as requiring that the long-term debt and preferred stock issued pursuant to D.04-10-037 be voided under § 825 if PG&E fails to maintain its capital structure in accordance with Commission requirements.

3. The cost of issuing the long-term debt and preferred stock authorized by D.04-10-037 could increase if investors believe there is a risk that such long-term debt and preferred stock might be voided after it has been issued.

4. Decision 04-10-037 authorized PG&E to issue \$1.538 billion of long-term debt and preferred stock during 2004 – 2008 for three purposes: finance capital expenditures, retire bridge loans, and redeem preferred stock. PG&E asks that D.04-10-037 be modified to allow PG&E to use the long-term debt and preferred stock authorized by the Decision for every purpose listed in § 817.

5. The Commission has previously authorized PG&E and other utilities to issue long-term debt and preferred stock for every purpose listed in § 817.

6. Decision 04-10-037 denied PG&E's request for (i) general authority to issue debt secured by its accounts receivable, and (ii) renew its accounts receivable (A/R) credit facility when it expires in 2007.

7. The restrictions on PG&E's authority to pledge its accounts receivable described in the previous Finding of Fact (FOF) do 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 existing \$650 million A/R credit facility that is secured by PG&E's accounts receivable.

8. PG&E requests that D.04-10-037 be modified to allow PG&E to (i) issue debt secured by its accounts receivable, and (ii) renew its A/R facility when it expires in 2007.

9. Granting PG&E's request described in the previous FOF would be consistent with Commission precedent and should help PG&E to issue debt at the lowest possible cost to its ratepayers.

10. PG&E requests that D.04-10-037 be modified to provide PG&E with unambiguous authority to issue FMBs as primary obligations.

11. FOF 14 and COL 17 of D.04-10-037 indicate that it was the Commission's intent in the Decision to provide PG&E with authority under § 851 to issue FMBs as primary obligations.

12. Notice of PG&E's petition to modify D.04-10-037 appeared in the Commission's Daily Calendar on December 1, 2004. There were no protests or other responses to the petition.

### **Conclusions of Law**

1. PG&E's petition to modify D.04-10-037 is subject to Commission approval pursuant to §§ 816 *et seq.*, and 851. The Commission has broad discretion under these statutes to approve, modify, or reject PG&E's petition.

2. PG&E's petition to modify D.04-10-037 should be granted in all respects.

3. Consistent with the condition adopted in D.04-10-037, if a default occurs and title to any PG&E property, franchise, permit, or right that is necessary or

useful in the performance of PG&E's duties to the public is transferred pursuant to FMBs, the thing transferred should continue to be used to provide utility services to the public until the Commission authorizes otherwise.

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

## **O R D E R**

### **IT IS ORDERED** that:

1. The petition to modify Decision (D.) 04-10-037 filed by Pacific Gas and Electric Company (PG&E) is granted pursuant to Public Utilities Code §§ 816 *et seq.*, and 851.

2. Long-term debt and preferred stock issued pursuant to D.04-10-037 shall not be deemed void if PG&E fails to comply with Commission capital structure requirements.

3. PG&E may use the long-term debt and preferred stock authorized by D.04-10-037 for every purpose listed in § 817.

4. PG&E may (i) issue debt pursuant to D.04-10-037 that is secured by its accounts receivable, and (ii) renew its accounts receivable credit facility when it expires in 2007.

5. PG&E may issue First Mortgage Bonds (FMBs) pursuant to D.04-10-037 as primary obligations. If a default occurs and title to any PG&E property, franchise, permit, or right that is necessary or useful in the performance of PG&E's duties to the public is transferred pursuant to FMBs, the thing transferred shall be used to provide utility services to the public until the Commission authorizes otherwise.

6. This proceeding is closed.

This order is effective today.

Dated April 7, 2005 at San Francisco, California.

MICHAEL R. PEEVEY  
President

GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
DIAN M. GRUENEICH  
Commissioners