

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-3870

July 8, 2004

R E S O L U T I O N

Resolution E-3870. Pacific Gas and Electric Company requests approval of Amendments No. 7 and No. 4 to its, respectively, Qualified and Non-Qualified Decommissioning Master Trust Agreements.

Request Granted.

By Advice Letter 2503-E filed on April 30, 2004.

SUMMARY

PG&E requests approval for amendments to decommissioning trust agreements.

This Resolution approves Pacific Gas and Electric Company (PG&E) Amendment No. 7 of the Qualified Decommissioning Trust Agreement and Amendment No.4 of the Non-qualified Decommissioning Trust Agreement pursuant to Ordering Paragraph 2 of Decision (D.) 87-05-062 dated May 29, 1987.

Proposed amendments are unopposed and in line with other utilities' decommissioning trust agreements.

The Amendments are modifications in the management agreements with Mellon Bank N.A. (Mellon) relating to decommissioning trusts for the Diablo Canyon Generation Station and Humboldt Bay Nuclear Unit 3. PG&E believes that the proposed amendments present minimal legal risk to the trusts and are in line with other California utilities' decommissioning trust agreements.

Energy Division recommends approval.

Energy Division recommends approval of PG&E's unopposed request. The Executive Director is authorized to sign the Amendments on behalf of the Commission.

BACKGROUND

The Commission opted for externally managed trust funds to accrue nuclear decommissioning trust funds (D.87-050-62).

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

In D.87-05-062 the Commission also established guidelines for preparing management agreements for nuclear decommissioning trust funds.

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 PG&E's trust agreements by Resolution E-3048. The trust agreements have been amended and restated from time to time thereafter with Commission approval.

Amendments to decommissioning trust agreements require 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, respectively of the qualified and non-qualified trust agreements, require Commission approval of amendments to the trust agreements.

Mellon has been PG&E's Trustee since 1990.

PG&E decommissioning trusts have had management agreements with Mellon since October 1, 1990 when the latter was engaged as the trustee for both qualified and non-qualified trusts [D.90-08-067, A.90-07-027].

As the nuclear decommissioning trustee, Mellon performs duties such as custody of securities, income collection, and trust asset accounting. Mellon is also responsible for monitoring investment manager trade instructions for compliance with regulatory constraints on permitted investments, retaining independent audit services, making quarterly estimated tax payments, preparation of the annual tax filings, and disbursement of funds to pay for all expenses related to the management of the trusts. Mellon also prepares monthly,

quarterly, and annual accounting reports as well as quarterly asset performance reports for the trusts.

By AL 2503-E, PG&E is requesting Commission approval of the two proposed amendments to the agreements with Mellon. The amendments, attached to AL 2503-E as Appendix A and B, revise PG&E's decommissioning trust agreements to incorporate standardized text required by Mellon. The amendments would apply to Diablo Canyon Generation Station and Humboldt Bay Nuclear Unit 3.

NOTICE

Notice of AL 2503-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 2503-E was not protested.

DISCUSSION

The amendments limit Mellon's liability unless for its own negligence or willful misconduct.

According to PG&E, the proposed changes bring the agreements in compliance with Mellon's current risk and credit requirements with respect to depository risk, indemnification, permissible cash advancements, foreign exchange, and market settlement practices. The proposed changes will also limit Mellon's liability when it acts in accordance with standard practices, such as in the selection of recognized foreign depositories, and for events beyond its control, such as for failures of established market exchanges. Mellon, however, remains liable for its own negligence or willful misconduct.

The proposed amendments are materially the same as with other California decommissioning trust agreements.

The proposed changes will be materially the same as those that Mellon has with Edison and Sempra Energy in their nuclear decommissioning trust investment management agreements that were approved by the Commission. PG&E believes that the proposed amendments are reasonable and represent minimal legal risk to the Trusts.

PG&E's Trust Committee has approved the amendments.

Nuclear Facilities Decommissioning Master Trust Committee (Committee) consists of five members, three of whom are appointed by the Commission. The Committee unanimously approved the amendments at its meeting on March 22, 2004.

The proposed amendments comply with the Commission requirements.

The Energy Division has reviewed AL 2503-E and the proposed amendments to the trust agreements and determined that they are in procedural compliance with the applicable Commission requirements as ordered in D.87-05-062 and D.97-07-055. 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 2503-E on April 30, 2004 requesting approval of amendments to its nuclear decommissioning trust agreements. The amendments reflect changes required by Mellon, the trustee for PG&E's decommissioning trust.
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 the Commission approve trust investment management agreements through the advice letter process.
4. In its March 22, 2004 meeting, PG&E's Nuclear Facilities Decommissioning Master Trust Committee approved the proposed amendments to the trust agreements.
5. Mellon Bank N.A. has been PG&E's nuclear decommissioning trustee since 1990.

6. The proposed amendments to the trust agreement limit Mellon's liability, unless for its own negligence or willful misconduct.
7. The proposed amendments are materially the same as other California utilities' decommissioning trust agreements.
8. The amendments to the agreements as proposed in AL 2503-E are in procedural 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 2503-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 July 8, 2004; the following Commissioners voting favorably thereon:

WESLEY M. FRANKLIN
Deputy Executive Director

MICHAEL R. PEEVEY
President

CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners