

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

Tel. No. (415) 703-1691



December 22, 2003

Advice Letter 2444-E

Ms Anita Smith, Rate Analyst
Pacific Gas and Electric Company
77 Beale Street, Mail Code 10B
San Francisco, CA 94177

Subject: Amendment to the Qualified and Nonqualified Nuclear Decommissioning Trust Agreements to reflect new Nuclear Regulatory Commission regulations

Dear Ms Smith:

Advice Letter 2444-E is effective December 18, 2003 by Resolution e-3859. A copy of the advice letter is returned herewith for your records.

Sincerely,

A handwritten signature in cursive script that reads "Paul Clanon".

Paul Clanon, Director
Energy Division



**Pacific Gas and
Electric Company**

Karen A. Tomcala
Vice President
Regulatory Relations

77 Beale Street, Room 1065
San Francisco, CA 94105

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November 21, 2003

Advice 2444-E

(Pacific Gas and Electric Company ID U 39 E)

Public Utilities Commission of the State of California

Subject: Amendment to the Qualified and Nonqualified Nuclear Decommissioning Trust Agreements to reflect new Nuclear Regulatory Commission regulations

Pacific Gas and Electric Company (PG&E), on behalf of its Nuclear Facilities Decommissioning Master Trust Committee (Committee), hereby submits Amendment No. 6¹ to the Pacific Gas and Electric Company Nuclear Facilities Qualified CPUC Decommissioning Master Trust (Qualified Trust) Agreement, and Amendment No. 3² to the Pacific Gas and Electric Company Nuclear Facilities Nonqualified CPUC Decommissioning Master Trust (Nonqualified Trust) Agreement, for approval in accordance with Ordering Paragraph (O.P.) 2 of Decision (D).87-05-062 dated May 29, 1987, and with the Nuclear Regulatory Commission's (NRC's) revisions to 10 CFR 50.75 published December 24, 2002.³

Purpose

The purpose of Advice 2444-E is to request the California Public Utilities Commission (Commission) to approve the Amendments and to authorize the Executive Director to sign the amendments on behalf of the Commission. The Amendments revise PG&E's decommissioning trust agreements (PG&E Trust Agreements) to reflect the changes required by NRC regulations effective December 24, 2003.

¹ Refer to Exhibit 1 of Attachment A.

² Refer to Exhibit 2 of Attachment A.

³ The Company reserves all legal rights to challenge the decisions or statutes under which it has been required to make this advice filing, and nothing in this advice filing constitutes a waiver of such rights. Also, the Company reserves any additional legal rights to challenge the requirement to make this advice filing by reason of its status as a debtor under Chapter 11 of the Bankruptcy Code, and nothing in this advice filing constitutes a waiver of such rights.

Background

In Order Instituting Investigation No. 86 (OII 86), the Commission conducted an extensive investigation into alternative methods of financing the ultimate cost of decommissioning the nuclear power plants owned by California utilities.⁴ In D.87-05-062, the Commission adopted an externally managed trust fund as the vehicle for accruing funds for the ultimate decommissioning of the nuclear power plants.⁵ In that decision, the Commission also established guidelines for these trust agreements.⁶

In response to D.87-05-062, the Company established two trust agreements for its nuclear decommissioning costs falling under Commission jurisdiction. One trust agreement was established as the vehicle to hold the decommissioning funds for contributions that qualify for an income tax deduction under Section 468A of the Internal Revenue Code (Qualified Trust)⁷ and the other was designed to hold the remaining funds (Nonqualified Trust).⁸

On November 25, 1987, the Company's trust agreements were approved by the Commission⁹ in Resolution E-3048 providing for the establishment of the Nuclear Facilities Decommissioning Master Trust Committee (Committee) consisting of five members, at least three of whom cannot be employees, officers, directors, or agents of the Company.

On December 24, 2002, the NRC published revisions to 10 CFR 50.75,¹⁰ 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. Because PG&E is an "electric utility" as defined in 10 CFR 2, the new regulations have minimal impact on the PG&E Trust Agreements. In such cases, trust agreements only must 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 objection from the NRC is received during the 30-day period. However, this notice requirement does not apply if the withdrawal is made for trust administrative expenses or for decommissioning expenses (as

⁴ OII 86, January 21, 1981, p. 3.

⁵ Decision No. 87-05-062, Ordering Paragraph No. 2, pp. 37-38.

⁶ Id.

⁷ Pacific Gas and Electric Company Nuclear Facilities Qualified CPUC Decommissioning Master Trust Agreement For The Diablo Canyon Nuclear Generating Station and Humboldt Bay Nuclear Unit No. 3

⁸ Pacific Gas and Electric Company Nuclear Facilities Nonqualified CPUC Decommissioning Master Trust Agreement For The Diablo Canyon Nuclear Generating Station and Humboldt Bay Nuclear Unit No. 3.

⁹ See Resolution No. E-3048, November 25, 1987.

¹⁰ Federal Register, Final Rule 10 CFR Parts 50 and 72, 67 Fed. Reg. 78332 (December 24, 2002).

defined in NRC regulations). The PG&E Trust Agreements currently provide that the trust assets may only be used for administrative and decommissioning expenses.

By this filing, the Company is requesting Commission approval of the amendments so that they conform to the revised NRC regulations. Pursuant to Section 2.12 of the Qualified Trust agreement and Section 2.10 of the Nonqualified Trust agreement, the Committee may amend the trust agreements thirty days after filing a copy of the proposed amendment with the CPUC. The Committee approved the amendments provided in Attachment A by unanimous written consent. The amendments have been filed with the Commission on the date of this letter (November 21, 2003) and in accordance with the 30-day notice provisions of the trust agreements and the resolution of the Committee, the amendments will become effective on December 23, 2003, if no objection is received from the Commission or other parties. This effective date is required in order to comply with NRC requirements. By this filing, PG&E is also asking the Commission to approve of the amendments, even if such formal approval occurs after the effective date of the amendments.

This filing will not increase any other rate or charge, cause the withdrawal of service, or conflict with any rate schedule or rule.

Protests

Anyone wishing to protest this filing may do so by sending a letter by **December 11, 2003**, which is 20 days from the date of this filing. The protest must state the grounds upon which it is based, including such items as financial and service impact, and should be submitted expeditiously. Protests should be mailed to:

IMC Branch Chief – Energy Division
California Public Utilities Commission
505 Van Ness Avenue, 4th Floor
San Francisco, California 94102
Facsimile: (415) 703-2200
E-mail: jjr@cpuc.ca.gov

Protests also should be sent by e-mail and facsimile to Mr. Jerry Royer, Energy Division, as shown above, and by U.S. mail to Mr. Royer at the above address. The protest should be sent via both e-mail and facsimile to PG&E on the same date it is mailed or delivered to the Commission at the address shown below.

Pacific Gas and Electric Company
Attention: Brian Cherry
Director, Regulatory Relations
77 Beale Street, Mail Code B10C
P.O. Box 770000
San Francisco, California 94177
Facsimile: (415) 973-7226
E-mail: RxDd@pge.com

Effective Date

PG&E requests that this filing become effective on **December 31, 2003**, which is 40 days after the date of filing.

Notice

In accordance with General Order 96-A, Section III, Paragraph G, a copy of this advice letter is being sent electronically and via U.S. mail to parties shown on the attached list. Address changes should be directed to Sandra Ciach at (415) 973-7572. Advice letter filings can also be accessed electronically at:

<http://www.pge.com/tariffs>

Karen A. Tonceda /enc

Vice President - Regulatory Relations

Attachments

AMENDMENT NO. 3
TO
PACIFIC GAS AND ELECTRIC COMPANY
NUCLEAR FACILITIES NONQUALIFIED CPUC DECOMMISSIONING
MASTER TRUST AGREEMENT
FOR
THE DIABLO CANYON GENERATING STATION
AND HUMBOLDT BAY NUCLEAR UNIT NO. 3

This Amendment No. 3 effective December 23, 2003 by and between Pacific Gas and Electric Company ("Company") and Mellon Bank, N.A., a national banking association ("Trustee").

WHEREAS, under the Nuclear Facilities Nonqualified Decommissioning Master Trust Agreement For The Diablo Canyon Nuclear Generating Station and Humboldt Bay Nuclear Unit No. 3 dated October 1, 1990 ("Agreement"), the Company amended and restated the original agreement and appointed Mellon Bank, N.A. as replacement trustee and amended the Agreement by Amendment No. 1 dated February 2, 1994 and by Amendment No. 2 dated March 20, 2000.

WHEREAS, the Nuclear Regulatory Commission has adopted a final rule requiring that certain modifications be made to the Agreement;

WHEREAS, pursuant to Section 2.10 of the Agreement, the Agreement may be amended by the Committee (as defined in the Agreement) thirty days after filing a copy of the proposed amendment with the CPUC;

WHEREAS, the Committee has approved by unanimous written consent the amendments set forth herein.

NOW, THEREFORE, the Company and the Trustee agree as follows:

1. The representations set forth above are incorporated herein by this reference thereto.
2. The following new section 8.13 is added to the Agreement:

"8.13 Nuclear Regulatory Commission Requirements.
Notwithstanding anything to the contrary contained in this Agreement, except for withdrawals made pursuant to 10 CFR 50.82(a)(8) and for payments of administrative costs (including taxes) and other incidental expenses of the Funds (including legal, accounting, actuarial and trustee expenses) in connection with the operation of the Funds, no disbursements or payments from a Fund shall be made: 1) unless 30 working days prior written notice of such

disbursement or payment has been made to the Nuclear Regulatory Commission, or 2) if the Trustee receives written notice of an objection from the Director of either the Office of Nuclear Material Safety and Safeguards or the Director of Nuclear Reactor Regulation. Notwithstanding the terms of Section 2.10 of this Agreement, no amendment of this section 8.13 shall be effective to the extent inconsistent with any rule or regulation of the Nuclear Regulatory Commission applicable to this Master Trust. This provision 8.13 shall survive termination of this Master Trust."

IN WITNESS WHEREOF, the Company and the Trustee have set their hands and seals in agreement to these Amendments effective as provided above.

PACIFIC GAS AND ELECTRIC COMPANY

By: _____
Senior Vice President and Chief Financial Officer

Date: _____

Attest: _____
Assistant Corporate Secretary

MELLON BANK, N.A.

By: _____

Date: _____

Attest: _____

AMENDMENT NO. 6
TO
PACIFIC GAS AND ELECTRIC COMPANY
NUCLEAR FACILITIES QUALIFIED CPUC DECOMMISSIONING
MASTER TRUST AGREEMENT
FOR
THE DIABLO CANYON GENERATING STATION
AND HUMBOLDT BAY NUCLEAR UNIT NO. 3

This Amendment No. 6 effective December 23, 2003 by and between Pacific Gas and Electric Company ("Company") and Mellon Bank, N.A., a national banking association ("Trustee").

WHEREAS, under the Nuclear Facilities Qualified Decommissioning Master Trust Agreement For The Diablo Canyon Nuclear Generating Station and Humboldt Bay Nuclear Unit No. 3 dated October 1, 1990 ("Agreement"), the Company amended and restated the original agreement and appointed Mellon Bank, N.A. as replacement trustee, and further amended the Agreement by Amendment No. 1 dated February 2, 1994, Amendment No. 2 dated December 31, 1994, Amendment No. 3 dated September 21, 1995, Amendment No. 4 dated December 5, 1996, and Amendment No. 5 dated March 20, 2000.

WHEREAS, the Nuclear Regulatory Commission has adopted a final rule requiring that certain modifications be made to the Agreement;

WHEREAS, pursuant to Section 2.12 of the Agreement, the Agreement may be amended by the Committee (as defined in the Agreement) thirty days after filing a copy of the proposed amendment with the CPUC; and

WHEREAS, the Committee has approved by unanimous written consent the amendments set forth herein.

NOW, THEREFORE, the Company and the Trustee agree as follows:

1. The representations set forth above are incorporated herein by this reference thereto.
2. The following new section 8.13 is added to the Agreement:

"8.13 Nuclear Regulatory Commission Requirements.

Notwithstanding anything to the contrary contained in this Agreement, except for withdrawals made pursuant to 10 CFR 50.82(a)(8) and for payments of administrative costs (including taxes) and other incidental expenses of the Funds (including legal, accounting, actuarial and trustee expenses) in connection with the operation of the Funds, no disbursements or payments from a Fund shall be made: 1) unless 30 working days prior written notice of such disbursement or payment has been made to the Nuclear Regulatory Commission, or 2) if the Trustee receives written notice of an objection from the Director of either the Office of Nuclear Material Safety and Safeguards or the Director of Nuclear Reactor Regulation. Notwithstanding the terms of Section 2.12 of this Agreement, no amendment of this section 8.13 shall be effective to the extent inconsistent with any rule or regulation of the Nuclear Regulatory Commission applicable to this Master Trust. This provision 8.13 shall survive termination of this Master Trust."

IN WITNESS WHEREOF, the Company and the Trustee have set their hands and seals in agreement to these Amendments effective as provided above.

PACIFIC GAS AND ELECTRIC COMPANY

By: _____
Senior Vice President and Chief Financial Officer

Date: _____

Attest: _____
Assistant Corporate Secretary

MELLON BANK, N.A.

By: _____

Date: _____

Attest: _____

**PG&E Electric Advice Filing List
General Order 96-A, Section III(G)**

ABAG Power Pool
Aglet Consumer Alliance
Agnews Developmental Center
Ahmed, Ali
Alcantar & Elsesser
Anderson Donovan & Poole P.C.
Applied Power Technologies
APS Energy Services Co Inc
Arter & Hadden LLP
Avista Corp
Barkovich & Yap, Inc.
BART
Bartle Wells Associates
Blue Ridge Gas
Bohannon Development Co
BP Energy Company
Braun & Associates
C & H Sugar Co.
CA Bldg Industry Association
CA Cotton Ginners & Growers Assoc.
CA League of Food Processors
CA Water Service Group
California Energy Commission
California Farm Bureau Federation
California ISO
Calpine
Calpine Corp
Calpine Gilroy Cogen
Cambridge Energy Research Assoc
Cameron McKenna
Cardinal Cogen
Cellnet Data Systems
Childress, David A.
City of Glendale
City of Healdsburg
City of Palo Alto
City of Redding
CLECA Law Office
Constellation New Energy
CPUC
Creative Technology
Crossborder Inc
CSC Energy Services
Davis, Wright Tremaine LLP
Davis, Wright, Tremaine, LLP
Defense Fuel Support Center
Department of the Army
Department of Water & Power City
Dept of the Air Force
DGS Natural Gas Services
DMM Customer Services
Downey, Brand, Seymour & Rohwer
Duke Energy
Duke Energy North America

Duncan, Virgil E.
Dutcher, John
Dynergy Inc.
Ellison Schneider
Energy Law Group LLP
Enron Energy Services
Exeter Associates
Foster, Wheeler, Martinez
Franciscan Mobilehome
Future Resources Associates, Inc
GLJ Energy Publications
Goodin, MacBride, Squeri, Schlotz &
Grueneich Resource Advocates
Hanna & Morton
Heeg, Peggy A.
Hogan Manufacturing, Inc
House, Lon
Imperial Irrigation District
Integrated Utility Consulting Group
International Power Technology
J. R. Wood, Inc
JTM, Inc
Kaiser Cement Corp
Korea Elec Power Corp
Marcus, David
Masonite Corporation
Matthew V. Brady & Associates
Maynor, Donald H.
McKenzie & Assoc
McKenzie & Associates
Meek, Daniel W.
Meyer, Joseph
Mirant California, LLC
Modesto Irrigation Dist
Morrison & Foerster
Morse Richard Weisenmiller & Assoc.
New United Motor Mfg, Inc
Norris & Wong Associates
North Coast Solar Resources
Northern California Power Agency
PG&E National Energy Group
Pinnacle CNG Company
PPL EnergyPlus, LLC
Price, Roy
Product Development Dept
Provost Pritchard
R. M. Hairston & Company
R. W. Beck & Associates
Recon Research
Regional Cogeneration Service
RMC Lonestar
Sacramento Municipal Utility District
SCD Energy Solutions
Seattle City Light

Sempra
Sempra Energy
Sequoia Union HS Dist
SESCO
Sierra Pacific Power Company
Silicon Valley Power
Simpson Paper Company
Smurfit Stone Container Corp
Southern California Edison
SPURR
St. Paul Assoc
Stanford University
Sutherland, Asbill & Brennan
Tabors Caramanis & Associates
Tansev and Associates
Tecogen, Inc
TFS Energy
TJ Cross Engineers
Transwestern Pipeline Co
Turlock Irrigation District
United Cogen Inc.
URM Groups
Utility Cost Management LLC
Utility Resource Network
Wellhead Electric Company
Western Hub Properties, LLC
White & Case
WMA