

Decision 84 07 111

JUL 18 1984

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Pacific Gas and Electric Company to)
modify Decision 83-06-095 to)
authorize the sale rather than lease)
of certain utility real property)
located in Fremont.)

Application 84-05-099
(Filed May 29, 1984)

O P I N I O N

In Decision (D.) 83-06-095 dated June 29, 1983 in Application (A.) 83-04-52, Pacific Gas and Electric Company (PG&E) was authorized, under Public Utilities (PU) Code 851, to lease certain of its existing real property located in Fremont, California on which a proposed bulk materials distribution center (the Facility) was to be constructed under terms and conditions of a Ground Lease substantially consistent with those set forth in A.83-04-52.

In this petition for modification, PG&E requests a modification of D.83-06-095 in A.83-04-52, under PU Code Sections 851 and 1708, authorizing it to sell rather than lease the above property on which the Facility is presently being constructed while retaining certain rights and interests of repurchase.

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Summary of Decision

This decision grants PG&E the authority requested in its petition for modification.

Notice of the filing of the petition for modification appeared on the Commission's Daily Calendar on May 31, 1984. No protests have been received.

PG&E plans to enter into a leveraged lease transaction to finance the construction of the Facility. PG&E states in its petition that it is presently negotiating with a financial intermediary to arrange the terms of the leveraged lease under which PG&E wishes ultimately to retain ownership of the 26.1 acres of land at the Fremont site in order to reserve the right to utilize portions of that land for future transmission corridors or other similar purposes. To permit its continued ownership of this land, PG&E proposes, in this proceeding, to execute a Ground Lease on the land in question with the Facility owner as lessee. Under a separate Facility lease (the Basic Lease), PG&E would then lease back the land and lease the Facility. D.83-06-095 approved the Ground Lease and found that the Commission does not have jurisdiction over the Basic Lease.

After the effective date of D.83-06-095 and through discussions with the contemplated ground lessee/Facility owner (the Owner), PG&E learned that the lien on its assets created by its First and Refunding Mortgage dated December 1, 1920 as supplemented

(the Indenture) prevented the Owner from agreeing to the contemplated Ground Lease. It appears the Owner cannot finance the transaction unless the Indenture lien, with respect to the land, is subordinated to the Ground Lease and to a fee mortgage^{1/} on the land.

In order to overcome the above obstacle, PG&E proposes that:

1. PG&E sell, in return for a note payable on the demand of PG&E, the land and the partially completed Facility to its wholly-owned subsidiary, Eureka Energy Company (Eureka) and thereby obtain a release of that property from the Indenture lien;
2. Eureka enter into the proposed Ground Lease and convey a fee mortgage on the land to the Owner's lenders;
3. Eureka sell the partially completed Facility to the Owner and use the sale proceeds to partially repay its note to PG&E;
4. PG&E then repurchase the land from Eureka subject to the Ground Lease and the fee mortgage; and
5. Eureka repay the remainder of the note to PG&E using the proceeds of the sale to pay PG&E.

^{1/} Represents a mortgage on land only.

Eureka will only retain ownership of the land for the time necessary to complete the construction and to close the permanent financing of the Facility. The result of these transitions would be to subordinate the Indenture lien to the Owner's rights under the Ground Lease and its lender's rights under the fee mortgage.

Sale Proceeds

The proposed purchase price for the sale of the real property to Eureka would be PG&E's book value of the real property, which will be \$1,815,716 plus the cost of any improvements incurred after March 31, 1984 and before the closing of the sale to Eureka.

The Repurchase Price

The repurchase price would be Eureka's cost of the real property minus the proceeds of the sale to Owner of the partially completed Facility. Neither the sale nor the repurchase would result in a loss or gain to PG&E. A substantially final draft of the Contract of Sale pertaining to the sale and repurchase agreement is shown as Exhibit A attached to the petition for modification.

Unchanged Status

Except as described in the two previous paragraphs, the basic transaction, as currently proposed, has not changed from that originally proposed in A.83-04-52. PG&E, therefore, requests that the Commission modify D.83-06-095 in A.83-04-52 to authorize PG&E

to sell the real property to Eureka as proposed in the petition, rather than to lease it to the Owner as authorized in D.83-06-095.

The Commission's Revenue Requirements Division has reviewed PG&E's petition for modification of D.83-06-095 in A.83-04-52 and recommends that PG&E's request, to sell rather than lease its real property in Fremont where the Facility is being constructed, be granted.

The Commission has reviewed PG&E's request and Revenue Requirements Division's recommendation. We accept the recommendation of the Division.

Finding of Fact

1. PG&E's request for a modification of D.83-06-095 dated June 29, 1983 in A.83-04-52 is reasonable and would not be adverse to the public interest.

2. There is no known opposition to this proceeding and no reason to delay granting the authority requested.

Conclusion of Law

1. A public hearing is not necessary.

2. The petition for modification should be granted to the extent set forth in the order which follows.

This authorization is not a finding of the value of the utility's property, nor does it indicate the amount to be included in ratesetting proceedings.

A.84-05-099 RR/KLH/ARM/WPSC*

The following order should be effective on the date of signature to permit PG&E to proceed expeditiously with the transactions and agreements to sell and repurchase its real property in Fremont, California on which the Facility is being constructed.

O R D E R

IT IS ORDERED that:

1. D.83-06-095 in A.83-04- 52 is modified to authorize Pacific Gas and Electric Company (PG&E), on or after the effective date of this order may sell its existing utility real property located in Fremont, California, which is necessary or useful in the performance of its duties while retaining certain rights and interest, substantially in the form set forth in this petition for modification. ✓
2. In all other respects, D.83-06-095 in A.83-04-52 remains in full force and effect. ✓

3. PG&E's petition to modify D.83-06-095 is granted as set forth above. ✓

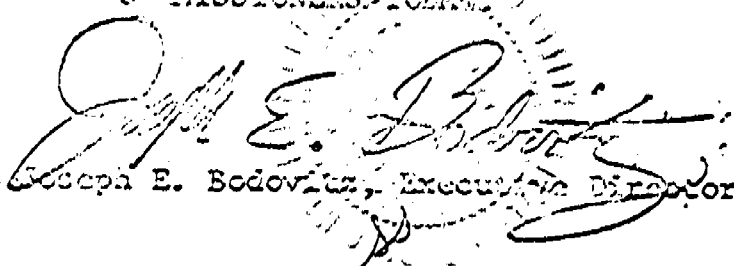
This order is effective today.

Dated JUL 18 1984 at San Francisco, California.

LEONARD M. GRIMES, JR.
President

VICTOR CALVO
FRISCILLA C. CREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS.


Joseph E. Bodovitz, Executive Director