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Decision 90-12-123 December 27, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC COMPANY and the CITY OF SANTA CLARA for an Order Pursuant to Section 851 of the Public Utilities Code Authorizing the Former to Convey an Interest in a Hydroelectric License for Project FERC No. 619 (Bucks Creek) in Accordance with the Terms of the Settlement of the Mokelumne River Project FERC No. 137 in an Agreement dated March 8, 1990.

Application 90-06-007 (Filed June 7, 1990)

(Electric) (U 39 E)

OPINION

This is an application in which Pacific Gas and Electric Company (PG&E) seeks authority to convey to the City of Santa Clara (Santa Clara) certain rights in a hydroelectric license pursuant to a settlement entered into between the parties resolving a relicensing dispute over the Mokelumne River Project. PG&E also requests: (1) authority to include in its 1993 General Rate Case, subject to review, the costs of the settlement; (2) authority to recover at a later date any costs associated with construction cost variances at the Grizzly Development (Grizzly) which are provided for in the settlement; and (3) a finding of nondeferrability for Grizzly for purposes of determining resource need in future Biennial Resource Plan Update (BRPU) proceedings.

Notice of the filing of the application appeared in the Commission's Daily Calendar on June 12, 1990. There are no protests. On December 6, 1990, the Energy Resources Branch of the Division of Ratepayer Advocates (DRA) submitted a memorandum which was served on all parties. The memorandum indicates that DRA proposed certain conditions to be included in the ensuing order and

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that PG&E agrees with these conditions. DRA does not object to ex parte treatment of the application. The DRA memorandum is designated Exhibit 1 in the proceeding.

The Commission makes the following findings and conclusions.

Findings of Fact

1. A public hearing is not necessary in this matter.
2. PG&E is a public utility as defined in Public Utilities Code Section 216 subject to the jurisdiction of the Commission. PG&E is engaged in the business of furnishing electric and gas service within California. It also produces and sells steam in certain parts of San Francisco.

3. Santa Clara is a municipal corporation existing under the laws of California.

4. On November 24, 1925, the Federal Power Commission (FPC), the predecessor of the Federal Energy Regulatory Commission (FERC), issued to PG&E a 50-year license pursuant to the Federal Power Act (FPA) for hydroelectric Project No. 137, located on the North Fork of the Mokelumne River in Amador and Calaveras Counties (Mokelumne River Project).

5. PG&E filed an application for a new license for the Mokelumne River Project on December 26, 1972. On April 9, 1974, Santa Clara filed a competing license application (Project No. 2745) claiming that a municipal preference provided by the FPA for the licensing of new projects also applied to the relicensing of existing projects. Since the November 23, 1975 expiration date of PG&E's license, PG&E has been operating the project under annual license.

6. PG&E and the Commission, among others, disagreed with Santa Clara's interpretation that municipal preference for hydroelectric licenses for new hydroelectric projects also applied to the relicensing of existing projects.

On October 16, 1986, Congress enacted the Electric Consumers Protection Act of 1986 (ECPA), which amended Sections 7 and 15 of the FPA to specify and clarify that municipal applicants shall have preference only during initial licensing proceedings for hydroelectric projects. However, Section 10 of the ECPA established certain procedures related to specific pending cases, of which the Mokelumne River Project was one. If the parties to a dispute elect to use the settlement procedure in which a competitor withdraws its competing application, Section 10 provides that the licensee pay the competitor compensation. The amount of compensation is, in the first instance, to be set by negotiation between the parties to the dispute. If the parties are unable to agree, Section 10 requires FERC to determine the amount of compensation.

7. On January 14, 1987, PG&E filed a notice of election to be governed by the provisions of Section 10 of the ECPA. On March 30, 1987, Santa Clara filed its acceptance of PG&E's election and its withdrawal of its application for Project No. 2745, its competing license application.

8. After extensive negotiations, in November 1988, PG&E and Santa Clara executed a Memorandum of Understanding (MOU) with respect to settlement of Santa Clara's claims regarding the Mokelumne River Project. The agreement based on this MOU was executed on March 8, 1990. The agreement is appended to the application as Attachment C.

9. The settlement agreement between PG&E and Santa Clara provides as follows:

- a. Upon final FERC approval of the agreement, PG&E will make a nonrefundable payment of \$1 million to Santa Clara.
- b. PG&E will sell and Santa Clara will purchase certain amounts of electric power. The power sale provisions in the agreement supersede the Power Sale Agreement which was the subject of the December 20, 1989

Offer of Partial Settlement filed at FERC on December 20, 1980 power sale was also a part of the overall settlement, but was implemented through a separate agreement in order to begin the sale in a timely manner pending completion of the overall settlement and regulatory approval of the settlement.

c. Subject to certain options to terminate development, which will extend the term of the power sales provisions in the agreement, PG&E will design and have built for Santa Clara, Grizzly, a new 20.52 megawatt (MW) hydroelectric power plant authorized by an April 29, 1988 order amending the Bucks Creek (Project No. 619) license. The target date for the commercial operation of Grizzly is January 1, 1994. Santa Clara will finance and pay for the construction of Grizzly, which is estimated to cost \$60 million. PG&E and Santa Clara will share in variance in construction costs, subject to certain limitations.

10. Subject to a possibility of reverter held by PG&E, Santa Clara will own Grizzly and will be responsible for its operation, receive electric power (up to 17.66 MW) at points of delivery attributable to Grizzly, and comply with license conditions and other obligations applying thereto. If necessary, PG&E and Santa Clara will cooperate in seeking relicensing of Project No. 619 as necessary to accomplish Santa Clara's continued ownership of Grizzly.

11. PG&E will operate Grizzly on behalf of Santa Clara for two years after the commercial operation date, and possibly thereafter by agreement of the parties. After that period, Santa Clara can designate another operator.

12. PG&E will deliver the equivalent of Grizzly power to Santa Clara during approximately the first 15 years of project operations without any separate or additional rates for delivery.

After this period, Santa Clara will pay PG&E an additional power delivery charge based upon 50% of PG&E's applicable transmission rates to Santa Clara for firm transmission services for similar projects determined in accordance with an existing interconnection agreement between PG&E and Santa Clara. In addition, PG&E will offer to sell and Santa Clara has the option to purchase supplemental energy equal to certain calculated amounts in order to make Grizzly useful in meeting Santa Clara's loads.

13. PG&E and Santa Clara have applied to the FERC to have the license for PG&E's Bucks Creek Project (Project No. 619) amended in order to include Santa Clara as a joint licensee, so that Santa Clara can own and operate Grizzly. This portion of the agreement was implemented by the filing of a "Joint Application for Designation of City of Santa Clara as a Joint Licensee of Project 619 (Bucks Creek), Request for Authorization for Subsequent Removal of Santa Clara as a Joint Licensee, and Request for Waiver of Regulations," which was filed with the FERC on March 13, 1990 in the docket for Project No. 137.

14. Under the agreement, PG&E will convey Grizzly to Santa Clara subject to a reversionary future interest in PG&E. PG&E may, at its option, upon notice, and at specified dates terminate Santa Clara's interest and thereby acquire Grizzly. The first possible date is the 15th anniversary after Grizzly begins operation and the last is on or after January 1, 2024. If PG&E exercises its right to reacquire Grizzly, PG&E will compensate Santa Clara for any unamortized investment Santa Clara then has in Grizzly.

Termination of Santa Clara's title and reversion of Grizzly to PG&E will also occur in the unexpected event that development of Grizzly ceases or there is catastrophic damage to Grizzly and Santa Clara elects to abandon Grizzly rather than to rebuild it, although under the latter circumstance, PG&E may choose not to accept the reversion.

If Grizzly reverts to PG&E, PG&E will solely own and operate Grizzly and will comply with license conditions and other obligations applying thereto.

15. Prior to FERC approval of the agreement without change unacceptable to either party, either party can unilaterally decide not to go forward with the agreement and terminate it without further obligation. In such event, the parties will be restored to their original positions without prejudice to their further pursuing remedies under ECPA.

16. Subject to certain conditions regarding notice and negotiations, PG&E may cancel development of Grizzly if:

- a. The FERC license conditions adversely affect the operations of the Bucks Creek Power House; or
- b. The FERC license conditions adversely affect the economics of Grizzly; or
- c. Commission approval of the instant application with acceptable terms is not obtained within six months following the FERC approval.

If PG&E exercises one of its options to cancel development of Grizzly, the agreement will continue in force and the power sale provisions of the agreement will continue, at varying prices, through 2007.

17. Santa Clara, subject to certain conditions, may also cancel development of Grizzly if it is advised by bond counsel that it may not be able to finance Grizzly on a tax-exempt basis. If Santa Clara exercises this option to cancel development of Grizzly, the agreement will continue in force and the power sale provisions in the agreement would continue, at varying prices, through 1997.

18. Options to cancel development of Grizzly are also provided, under certain conditions, if any license amendments necessary to implement Santa Clara's ownership of Grizzly are not accepted in whole by PG&E and approved by the FERC by December 31,

1990; if the final project cost target based on actual third party contract award prices exceeds the initial project cost target estimated at the time of settlement by more than 10%; if the commercial operation date is delayed beyond December 31, 1997; if PG&E determines that construction will be unduly burdensome; or if PG&E is unable to obtain necessary permits. Such options also trigger the power sale provisions in the agreement.

19. The settlement satisfies all of Santa Clara's claims for compensation related to its efforts to obtain an FPA license for the Mokelumne River Project, as provided by Section 10 of the ECPA. PG&E and Santa Clara have also agreed that the settlement constitutes a mutually satisfactory compensation arrangement that is consistent with the provision of the FPA.

20. In order for the ratepayers to receive the full benefits of the settlement, PG&E requests that the Commission provide that its future acquisition of Grizzly is a nondeferrable resource for purposes of determining resource needs in future BRPU proceedings. Grizzly meets all Commission requirements of nondeferrability under the particular facts presented in this case.

21. The settlement of the dispute between PG&E and Santa Clara includes the aforementioned payment to Santa Clara as well as certain design costs for Grizzly. These costs are approximately \$3 million. This is far less than the maximum compensation of approximately \$40 million that PG&E could be required to pay Santa Clara under the ECPA. PG&E has enabled the ratepayers to enjoy the benefits of relicensing Mokelumne at a low cost.

22. The agreement including the Bucks Creek license transfer is fair, just, and reasonable to the parties and to PG&E's ratepayers.

23. PG&E is not requesting rate recovery of the \$3 million costs at this time. It proposes to include these costs in its 1993 General Rate Case as intangible plant and amortize them over the life of the new Mokelumne Project license. In addition, in the

event, PG&E becomes liable for certain cost variances in the construction of Grizzly in the future; it also requests that the Commission allow it to request rate relief for those variances.

24. PG&E's latest balance sheet as of March 31, 1990 indicates it has total assets of \$20,305,717,000 and net income of \$210,412,000 for the three months ending on March 31, 1990.

25. PG&E has the ability, including financial ability, to carry out the terms of the proposed agreement.

26. The transfer of rights in the hydroelectric license hereunder, consideration from PG&E to Santa Clara and related provisions of the settlement agreement between PG&E and Santa Clara are not adverse to the public interest.

27. PG&E and DRA have agreed that the following conditions should be included in the ensuing order:

- "1. PG&E must notify CPUC of the determination of the final project cost target (FPCT) of this project concurrent with its notification to the City of Santa Clara of such determination. PG&E shall provide to this Commission all calculations with the supporting information and documentation.
- "2. PG&E must provide quarterly updates of the cost of construction including but not limited to the interim final costs estimates, projected cost targets, and projected actual project costs which will alert the CPUC of any cost overruns above the FPCT for this project.
- "3. PG&E should be permitted to request recovery of \$2.9 million that it has already spent on this project in its 1993 General Rate Case (GRC). These costs consist of \$1.9 million in preliminary engineering costs incurred prior to Jan. 1, 1989, and a \$1 million non-refundable cash payment made to the City of Santa Clara as part of the Mokelumne relicensing settlement. The reasonableness of the \$1.9 million in preliminary engineering costs would be determined in PG&E's 1993 GRC.

"4. PG&E should be permitted to request authority at a later date to recover any costs associated with construction cost variances at the Grizzly development as provided for in the Mokelumne settlement.

"5. The Commission should grant PG&E's request that in the event PG&E acquires the Grizzly development, that future acquisition is a nondeferrable resource for the purposes of determining resource needs in future BRPU proceedings. The Commission should determine, however, that such a finding is particular to the circumstances of this specific case and does not create a precedent.

"6. PG&E should be permitted, in the event it acquires the Grizzly development, to request recovery of the acquisition cost, subject to Commission review at that time.

"7. In the event the project is canceled, the settlement of the Mokelumne relicensing dispute remains in effect. PG&E therefore should be permitted to request recovery of the sunk costs and other costs associated with the cancellation, subject to Commission review at that time."

28. Because the public interest would best be served by having the transfer of rights in the hydroelectric license and terms of the settlement agreement implemented expeditiously, the ensuing order should be made effective on the date of issuance.

Conclusions of Law

1. The application should be granted.
2. The ensuing order should contain the conditions agreed to by PG&E and DRA as set forth in Finding of Fact No. 27.

ORDER of 11/01/93 3381 17
was served on all parties in accordance
with the provisions of the Public Utilities Code
IT IS ORDERED that:

1. On or after the effective date of this order, Pacific Gas and Electric Company (PG&E) may convey to the City of Santa Clara (Santa Clara) an interest in the hydroelectric license for PG&E's Bucks Creek Project (Project No. 619) and carry out the terms and provisions of the settlement agreement entered into between the parties on March 8, 1990, and attached to the application as Attachment C, subject to the express conditions set forth in this order.

2. PG&E shall notify the Division of Ratepayer Advocates (DRA) in writing of the determination of the final project cost target (FPCT) for the Grizzly Development (Grizzly) at the same time it gives notification to Santa Clara together with all calculations, supporting information, and documentation which supports the FPCT.

3. PG&E shall submit to DRA quarterly updates for the cost of construction of Grizzly which shall include, but not be limited to, the interim final cost estimates, projected cost targets, and projected actual project costs which may alert the Commission of any cost overruns in excess of the FPCT.

4. PG&E is authorized to request recovery of \$2,900,000 which it has spent on Grizzly in its 1993 General Rate Case (GRC). These costs consist of \$1,900,000 for preliminary engineering costs incurred prior to January 1, 1989 and a \$1,000,000 nonrefundable cash payment to Santa Clara as part of the settlement agreement set forth in Ordering Paragraph 1. The reasonableness of the \$1,900,000 for preliminary engineering costs shall be determined in the 1993 GRC.

5. PG&E is authorized to request authority at a later date to recover any costs associated with construction cost variances at

Grizzly as provided for in the settlement set forth in Ordering Paragraph 1.

6. In the event PG&E acquires Grizzly, such future acquisition shall be treated as a nondeferrable resource for the purposes of determining resource needs in future Biennial Resource Plan Update proceedings. This ordering paragraph is based on the particular facts presented in this record and is not precedential.

7. In the event PG&E acquires Grizzly, it is authorized to request recovery, subject to Commission review, of the acquisition cost at the time of acquisition.

8. In the event Grizzly is canceled, the settlement agreement set forth in Ordering Paragraph 1 will still be in effect. If this occurs, PG&E is authorized to request, subject to Commission review, recovery of the sunk costs and other costs associated with the cancellation.

9. The authority granted in Ordering Paragraph 1 shall expire unless it is exercised by December 31, 1992.

This order is effective today.

Dated December 27, 1990, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

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

[Handwritten Signature]
JOHN B. OHANIAN, EXECUTIVE DIRECTOR