

Decision No. 89855 ? JAN 16.1979

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of Pacific Power & Light Company)
for an Order Approving the)
transfer of Dave Johnston Coal)
Mining and Coal Transportation)
Properties to Glenrock Coal)
Company, a subsidiary of NERCO,)
INC. Pursuant to the Provisions of)
Public Utilities Code, Section)
851, or, in the Alternative, for)
an Order Exempting such Transfer)
from such Approval Requirements.)

Application No. 58403
(Filed October 10, 1978)

O P I N I O N

Pacific Power & Light Company (Pacific Power) requests authority to transfer utility property, or in the alternative, requests an exemption from this Commission's approval requirements for such transfer.

Pacific Power has its main office in Portland, Oregon and is engaged principally in the business of generating, purchasing, transmitting and distributing electricity. Over 95% of its electric utility revenues are derived from operations in states other than California. The company and its affiliates also provide telephone, water and steam heat utility services and engage outside of California in various non-utility enterprises.

Pacific Power owns certain coal mining and coal transportation properties in the State of Wyoming known as the Dave Johnston coal mine. The Dave Johnston mine is the sole supplier of coal to the applicant's Dave Johnston steam-electric plant, also in Wyoming. Pacific Power proposes to transfer the Dave Johnston coal mine to Glenrock Coal Company (Glenrock Coal), a wholly-owned subsidiary of Northern Energy Resources Company (NERCO), which is in turn a wholly-owned subsidiary of Pacific Power. The proposed transfer is

in accordance with a plan to place Pacific Power's mining operations under the operational control of NERCO and its subsidiaries to which all of the applicant's employees engaged in mining, including executive and technical services personnel, have been transferred. Pacific Power requests that the transfer be approved, or in the alternative that the transfer be exempted from the approval requirements under Section 851 of the Public Utilities Code as not necessary in the public interest. The company states that it has also filed for approval of the transfer with the utility commissions in Oregon and Wyoming.

This Commission has previously exempted Pacific Power from most provisions of Sections 816 through 854 of the Public Utilities Code. Decision No. 84286, dated April 1, 1975 in Applications Nos. 55569 and 55570, ordered as follows:

"IT IS ORDERED that Pacific Power & Light Company is hereby exempted from all provisions of Article 5 and the mortgaging or otherwise encumbering provisions of Article 6, Chapter 4, Part 1, Division 1 of the California Public Utilities Code."

This exemption was reaffirmed in Ordering Paragraph No. 6 of Decision No. 88716, dated April 18, 1978 in Application No. 57946. There has been no subsequent decision or act of the Commission which rescinds or modifies Decision No. 84286.

Neither Decision No. 84286 nor Decision No. 88716 addressed the specific issue raised in the present application, i.e., the transfer of property necessary or useful in the performance of public utility service. While Decision No. 88716 was concerned with the sale of property, the property involved (the Wyodak Project) was not yet dedicated to public service, and therefore the sale was not within the Commission's power to approve or disapprove. In contrast, the Dave Johnston coal properties are presently in use as sources of fuel for the applicant's utility operations.

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The Legal Division and the Operations Division have reviewed the application and concur with the Finance Division that exemption from the Commission's approval requirements should be granted.

After consideration the Commission finds, pursuant to Section 853 of the California Public Utilities Code, that it is not necessary, in the public interest, to apply Section 851 of the Code to the transfer of the Dave Johnston mine inasmuch as it is located outside of California and the effect of such transfer upon customers residing within the State of California will be de minimis. We conclude that Pacific Power should be exempted from Section 851 of the Public Utilities Code with respect to this transfer. A public hearing is not necessary. There is no known opposition and no reason to delay granting the order for exemption.

O R D E R

IT IS ORDERED that Pacific Power & Light Company is exempted from those provisions of Section 851 of the California Public Utilities Code with respect to the proposed transfer of the Dave Johnston mine, located in the State of Wyoming.

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The effective date of this order is the date hereof.

Dated at San Francisco, California, this 16th day
of JANUARY, 1979.

Robert Buttrick
President
Robert W. Hall
Clare J. Deady

Commissioners