

SEP 24 1996

Decision 96-09-094 September 20, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Authorization to Sell Grizzly Substation to The Regents of the University of California Pursuant to Public Utilities Code Section 851. Application 96-03-058 (Filed March 29, 1996) amended June 13, 1996

ORIGINAL

Substation... previously conveyed by UC to Grizzly... O.P.I.N.I.O.N.

1. Summary

By this decision we authorize Pacific Gas and Electric Company (PG&E) to sell an electric facility to the University of California (UC) in order that the university may qualify for a more favorable electric rate. Proceeds of the sale would flow through to ratepayers.

2. Background

Since 1982, PG&E has provided electric service to the UC campus at Berkeley under a contract that gave UC an option, after January 1, 1995, to purchase an electric substation and distribution lines located on the Berkeley campus. In 1994, UC had asked PG&E to terminate the 1982 agreement and contract for UC's purchase of the electrical facilities.

UC's primary reason for buying the facilities is to qualify for a more favorable electric rate (E20T), which is available to a customer with a minimum load of 4 megawatts that provides its own substation facilities and takes delivery of electricity at transmission voltage.

The parties have entered into a purchase agreement dated June 15, 1995. The agreement is attached to the application as

Exhibit A. The agreement requires approval by the Commission pursuant to Public Utilities Code § 851.

Total purchase price (for all of the property to be sold) is \$3,130,200, plus ad valorem taxes. The property consists of Grizzly Substation itself, located at the intersection of Cyclotron Road and Canyon Drive on the UC Berkeley campus, and 12-kilovolt distribution lines extending from Grizzly Substation to the Campus Substation. PG&E also would relinquish all grants of rights and easements previously conveyed to the utility by UC for Grizzly Substation.

The sales agreement contains three provisions regarding arrangements for the delivery of electric services made necessary by the proposed sale. First, UC agrees to accept capacity and energy from OLS Energy-UC Berkeley (OLS), and UC will deliver any excess capacity and energy above UC's load to PG&E at Grizzly Substation. Second, UC will accept back-up and supplementary electrical service from PG&E for OLS at Grizzly Substation and UC will deliver this service to OLS at UC's Substation No. 01. Third, UC will accept electrical energy from PG&E at the Grizzly Substation for the U.S. Department of Energy on behalf of the Lawrence Berkeley Laboratory (DOE) as an end user, and UC will deliver this energy to DOE at Grizzly Substation. As part of this application, PG&E also requests approval of these provisions regarding these electric service arrangements.

Section 851 of the PU Code states in pertinent part:

"No public utility... shall sell... the whole or any part of its... plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder... without having first secured from the commission an order authorizing it so to do."

3. Amended Application

PG&E's application was filed on March 29, 1996. The Division of Ratepayer Advocates (DRA) on May 13, 1996, requested and was granted an extension of time to file a protest in order for it to investigate ratemaking treatment for proceeds of the sale. On May 24, 1996, DRA notified the parties that it would not be filing a protest based on its discussions with PG&E. DRA explained that PG&E's original proposal was to increase the depreciation reserve and decrease rate base by the amount of the gain (on sale). PG&E has indicated that it will amend the application to propose establishing a balancing account to collect the proceeds of the sale and to ensure that these proceeds will flow to ratepayers. This approach will provide more certainty for ratepayers than the original proposal because of the Commission's move toward performance-based ratemaking. In the future, PG&E's rate base probably will not determine its revenue requirement. (DRA Letter, May 24, 1996)

PG&E filed its amendment to the application on June 13, 1996. No protests have been received. The application is deemed submitted for Commission decision.

4. Discussion

Under the amendment to its application, net-of-tax proceeds from the sale of Grizzly Substation would be booked to a new memorandum account and would accrue interest at the commercial paper rate. After a Competition Transition Charge (CTC) balancing account is established as part of electric industry restructuring

(see Decision 95-12-063, pp. 126-27), the net-of-tax sale proceeds, and crediting of divested asset value against transition costs, as envisioned in the Electric Industry Restructuring Policy Decision (D.95-12-063) in the Electric Industry Restructuring Reframing and

2 The University of California (moved formally to) intervene on May 16, 1996, stating its full support for the application and urging expeditious approval. The motion to intervene is unopposed and is granted for the Grizzly Substation.

including interest, in the memorandum account would be booked as an offset to the CTC balancing account. As in the original application, PG&E would retire the Grizzly Substation on its books, reducing plant and depreciation reserve by the historical cost of the plant, \$1,989,486. Both the original and amended proposal would credit an estimated \$51,317 to depreciation reserve to offset an equal amount in deferred taxes, with no resulting change in rate base. Of the sale proceeds of \$3,130,200, both approaches would earmark an estimated \$342,107 to pay income tax expense, leaving estimated net of tax proceeds of \$2,788,093. Under the original approach, this amount would be credited to the depreciation reserve. Under the amended proposal, PG&E would book \$2,788,093 to a memorandum account and eventually to a new CTC account. Either approach would benefit PG&E's ratepayers: the original approach by reducing rate base and annual depreciation expense, and the revised proposal by reducing the amount of CTC to be collected from PG&E ratepayers.

The relevant inquiry in an application for transfer of public utility property is whether the transfer will be adverse to the public interest. (Re Universal Marine Corporation, (1984) 14 CPUC2d 644, 646.) The proposed sale of Grizzly Substation to UC is not adverse to the public interest. UC will benefit through a more favorable rate schedule, service to other PG&E customers will not be impaired, and proceeds of the sale will flow to PG&E ratepayers through a reduction in rates that otherwise would be charged in the future.

We note that the amended application anticipates the CTC and crediting of divested asset value against transition costs, as envisioned in the Electric Industry Restructuring Policy decision (D.95-12-063) in the Electric Industry Restructuring Rulemaking and Investigation (Rulemaking 94-04-031/Investigation 94-04-032). Although we approve the amended application in this decision, we emphasize that the treatment provided for the Grizzly Substation

here is not precedential.³ We also note that D.95-12-063 is a proposal until completion of its review under the California Environmental Quality Act (CEQA). To the extent that our treatment of the Grizzly Substation anticipates electric restructuring matters, it will be subject to later adjustment after completion of the CEQA analysis taking place at this time. However, and finally, it should be noted that OLS is a third-party operator of a cogeneration plant located at UC and holds a current contract as a qualifying facility. Appendix A to the application contains a letter of understanding with OLS acknowledging that UC now will be liable for any losses associated with outages at the Grizzly Substation. The sale of the substation does not modify PG&E's contract with OLS, nor does it allow OLS to self-provide.

Findings of Fact

1. Since 1982, PG&E's electric service to UC at its general campus area in Berkeley was provided under a contract called "Agreement (Electric Services-General Campus Area)".

2. The 1982 agreement provided that PG&E could terminate the contract on 30 days' notice on or after January 1, 1995, and that UC could then purchase Grizzly Substation for a price based on reproduction cost new, less depreciation.

3. In 1994, UC asked PG&E to terminate the 1982 agreement and to sell Grizzly Substation to UC.

3 Substations are considered to be transmission or distribution assets, whereas the CTC balancing account is designed to recover uneconomic costs related to generation assets. Despite this, DRA urges use of the CTC account in this particular case to ensure that ratepayers, rather than shareholders, receive the gain on sale associated with the substation. While our decision today permits this method of recovery in order not to delay this transaction, we caution utilities that it is not a precedent, and utilities should not seek to recover stranded transmission or distribution costs through the CTC.

4. The parties executed a purchase and sale agreement dated June 15, 1995, in which PG&E agreed to terminate its 1982 agreement and UC agreed to purchase the Grizzly Substation and related transmission lines for \$3,130,200. The 1985 agreement provides for continued service to other customers served through the Grizzly Substation.

6. UC expects to benefit from the transaction by qualifying for a more favorable electric rate (E20T) available to a customer with its own substation facilities.

7. After discussions with DRA on rate making treatment of non-sale proceeds, PG&E on June 13, 1996, amended its application to flow sale proceeds, plus interest, to ratepayers through a new memorandum-account procedure.

8. There have been no protests to the application, as amended, and there is no known opposition to the proposed transaction.

9. The amended application anticipates transition costs and treatment of divested assets envisioned by the Electric Restructuring Policy decision. These aspects of the application are subject to change pending completion of the CEQA analysis of the policy decision.

Conclusions of Law

1. Commission approval of the sale of assets used and useful in public utility service is required by PU Code § 851.

2. The relevant inquiry in an application for transfer of public utility property is whether the transfer will be adverse to the public interest.

3. The proposed sale by PG&E of Grizzly Substation to UC is not adverse to the public interest.

4. The application, as amended, should be approved.

5. This order should be made effective immediately so that public benefits of the proposed transaction can begin to accrue.

ORDER

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) may sell to The Regents of the University of California (UC) the Grizzly Substation in accordance with the terms and conditions of the "Purchase and Sale Agreement - Grizzly Substation," attached to the application as Exhibit A, as amended by PG&E in its Amendment to Application filed June 13, 1996.

2. Electric power delivery arrangements among PG&E, UC, the United States Department of Energy on behalf of the Lawrence Berkeley Laboratory, and O.L.S. Energy-UC Berkeley, as more fully set forth in the Purchase and Sale Agreement (Exhibit A, Paragraphs 14-15), are approved.

3. The ratemaking treatment requested by PG&E, as amended by PG&E in its Amendment to Application filed June 13, 1996, is approved.

4. This proceeding is closed.

This order is effective today.

Dated September 20, 1996, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

I abstain.

/s/ DANIEL Wm. FESSLER
Commissioner