

Decision 96-10-027 October 9, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company and Clinton M. Foster and Geraldine Foster, Joint Tenants, for an Order Authorizing the Former to Sell and Convey to the Latter a Certain Parcel of Land in Butte County.

(U 39 B)

ORIGINAL
Application 95-06-050
(Filed June 22, 1995)

O P I N I O N

Summary

This order approves a settlement for the disposition of gain on sale of property owned by Pacific Gas and Electric Company (PG&E).

Background

PG&E and Geraldine and Clinton Foster (Fosters) filed a joint application requesting authorization for PG&E to sell a 39-acre property in Butte County to the Fosters. PG&E would retain an easement for its electric service. The book value of the property is \$566. Purchase price to PG&E is \$31,200.

In the alternative, PG&E requested that we issue a declaratory judgment that the property in question was not "necessary or useful in the performance of its duties to the public," as provided by Public Utilities (PU) Code § 851. If this were so, then Commission authorization for the sale would not be necessary. The Commission's Division of Ratepayer Advocates (DRA) protested the application, stating that there was insufficient information on which to make a determination concerning PU Code § 851 or to determine whether the sale was in the public interest if PU Code § 851 did apply. Administrative Law Judge (ALJ) Rosenthal issued a ruling dated September 13, 1995, denying PG&E's request for a declaratory judgment, holding that PU Code § 851 was

applicable to the instant proceeding, and directing PG&E to provide additional information.

Discussion

The prime issue between PG&E and DRA was the disposition of the gain obtained from the difference between PG&E's book value and the price to be obtained from the Fosters. The parties¹ filed a settlement agreement dated June 12, 1996. This document was revised at the suggestion of the ALJ by an amended settlement dated July 29, 1996. The determination of the after-tax gain from the sale, and the disposition of that gain, are now more fully disclosed.

It was mutually agreed that the net after-tax gain was \$18,060, "...that \$10,000 will be credited to PG&E's ratepayers through the 1996 Electric Revenue Adjustment Account, and the remaining \$8,060 will be recognized in PG&E's retained earnings." This is a fair allocation of the proceeds from the sale. The settlement also included a promise by PG&E to include specific information in any future applications to dispose of utility property pursuant to PU Code § 851.

The amended settlement is reasonable, and we will grant the requested approval. A copy of the amended settlement is appended to this decision.

Findings of Fact

1. The parties request that a settlement dated June 12, 1996 be set aside and an amended settlement dated July 29, 1996 be adopted. This amended settlement has been signed by all parties.

2. PG&E has agreed to sell and the Fosters have agreed to purchase a 39-acre parcel of land in Butte County for \$31,200.

¹ The settlement was signed by representatives of PG&E and DRA. The Fosters authorized PG&E to sign and submit the settlement on their behalf.

3. PG&E has retained an easement across this property for electric service.

4. Under the terms of the amended settlement dated July 29, the parties agree that PG&E will realize an after-tax gain on sale of \$18,060.

5. The parties agree that \$10,000 should be credited to ratepayers through the 1996 Electric Revenue Adjustment Account.

6. The parties agree that \$8,060 should be recognized in PG&E's retained earnings.

7. PG&E agrees that in future applications under PU Code § 851 it will file specific information as shown in Paragraph 17 of the amended settlement, attached to this decision.

8. The parties request acknowledgments that this amended settlement does not constitute approval of, or precedent regarding, any principle or issue in this or any other proceeding.

9. The parties request that we waive the settlement notice and conference procedure contemplated in our Rule 51.1(b).

Conclusions of Law

1. The amended settlement attached to this decision is reasonable, and the amended settlement should be adopted.

2. The amended settlement which we adopt does not constitute a precedent for, or approval of, any principle or issue for any other proceeding.

3. Since all parties to the proceeding have signed the amended settlement, the requirement in Rule 51.1(b) for a notice and setting of a settlement conference should be waived.

ORDER

IT IS ORDERED that:

1. The requirement of Rule 51.1(b) is waived.
2. Pacific Gas and Electric Company (PG&E) is authorized to convey property to Clinton and Geraldine Foster as stated in the amended settlement dated July 29, 1996.
3. Future applications under Public Utilities Code § 851 by PG&E shall conform to the provisions of Paragraph 17 of the amended settlement agreement, attached to this decision.
4. PG&E shall notify the Executive Director of the date of transfer of the property in question, and the accounting entries made in the implementation of this decision.

This order is effective today.

Dated October 9, 1996, at San Francisco, California.

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

APPENDIX

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND
ELECTRIC COMPANY and
CLINTON M. FOSTER and
GERALDINE FOSTER, Joint Tenants,
for an Order Authorizing the Former to
Sell and Convey to the Latter a Certain
Parcel of Land in Butte County

Application No. 95-06-050

(U 39 E)

AMENDED SETTLEMENT

CATHERINE A. JOHNSON
Attorney for
DIVISION OF RATEPAYER ADVOCATES
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Telephone: (415) 703-1385
Facsimile: (415) 703-4432

MICHELLE L. WILSON
CHARLES R. LEWIS, IV
Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY
P.O. Box 7442
San Francisco, CA 94120
Telephone: (415) 973-6640
Facsimile: (415) 973-0516

APPENDIX

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND
ELECTRIC COMPANY and
CLINTON M. FOSTER and
GERALDINE FOSTER, Joint Tenants,
for an Order Authorizing the Former to
Sell and Convey to the Latter a Certain
Parcel of Land in Butte County

Application No. 95-06-050

(U 39 E)

AMENDED SETTLEMENT

1. On June 22, 1995, Pacific Gas and Electric Company (PG&E) filed Application No. 95-06-050 requesting authorization to sell a Certain Parcel of Land in Butte County ("the Property") to Clinton M. and Geraldine Foster, Joint Tenants, ("the Fosters") pursuant to Public Utilities Code section 851, in accordance with the Standard Purchase and Sale Agreement dated May 2, 1995. PG&E filed an amended application on December 20, 1995, which requested approval of the requested ratemaking treatment or, in the alternative, a bifurcation of the ratemaking issues from the approval of the sale.

2. The purchase price is \$31,200.

3. On March 25, 1996, Division of Ratepayer Advocates (DRA) submitted its Report on the sale of the Property. In its Report, DRA recommended that the Commission approve the sale but reject the ratemaking proposal put forth by PG&E and the alternative procedural proposal to bifurcate ratemaking issues from the case. DRA's ratemaking recommendation was based on its analysis of the reasonableness of PG&E's proposals.

4. On April 3, 1996, PG&E submitted its Rebuttal to the DRA Report. In its Rebuttal, PG&E supported the ratemaking treatment requested in its Application, although it did agree bifurcation would not be appropriate at that point in the proceeding.

5. In Settlement negotiations which began on April 23, 1996, PG&E and DRA evaluated the ratemaking positions they had presented and reached a compromise resolution of

1 all disputed ratemaking issues provided that such compromise was not to be considered
2 precedential in any other proceeding.

3 6. The only party to this proceeding, other than PG&E and DRA is the Fosters.
4 The Fosters have reviewed and agree with the terms of the Settlement. On May 24, 1996, in
5 accordance with Rule 4(d) of the Commission's Rules of Practice and Procedure, the Fosters
6 fully authorized PG&E to sign and submit this Settlement on their behalf. Therefore, PG&E,
7 DRA, and the Fosters are the three Settling Parties that support and propose this Settlement.

8 7. All three Settling Parties agree that the proposed sale should be approved.

9 8. Although not necessarily concurring with the other Settling Parties' reasoning
10 for the determination of this Settlement position, PG&E and DRA agree to the following
11 ratemaking treatment:

12 a. Upon completion of the sale, the Property will be retired from PG&E's Electric
13 Department rate base as described in PG&E's Application.

14 b. Based on PG&E's book value of the property being sold, the sales price of
15 \$31,200 results in a taxable gain of \$30,634. After deducting federal corporate
16 income and state franchise tax expense, an after-tax gain of \$18,060 will be
17 realized. The Settling Parties propose that \$10,000 will be credited to PG&E's
18 ratepayers through the 1996 Electric Revenue Adjustment Account, and the
19 remaining \$8,060 will be recognized in PG&E's retained earnings.

20 9. The Settling Parties agree ratepayers will not bear the cost of any expansion to
21 the distribution-line easement located on the Property.

22 10. The Settling Parties agree PG&E will not be responsible to the Fosters for any
23 hazardous materials on or affecting the Property.

24 11. The Settling Parties agree PG&E's Application, DRA's Report, PG&E's
25 Rebuttal, and this Settlement should be admitted into evidence by stipulation.

26 12. This Settlement is indivisible and each part is interdependent with each and all
27 other parts. Any Settling Party may withdraw from this Settlement if the Commission
28

1 modifies, deletes from, or adds to the terms set forth herein. The Settling Parties agree,
2 however, to negotiate in good faith with regard to any Commission-ordered changes in order
3 to restore the Settlement to an acceptable compromise document.

4 13. The Settling Parties agree to extend reasonable efforts to ensure the adoption of
5 this Settlement.

6 14. The Settling Parties agree that the California Public Utilities Commission shall
7 have exclusive jurisdiction over any issues related to this Settlement as a consequence of
8 Public Utilities Code section 851, and that no other court, regulatory agency, or other
9 governing body shall have jurisdiction over any issue related to the interpretation of this
10 Settlement, the enforcement of the Settlement, or the rights of the Settling Parties to the
11 Settlement (with the exception of the California Supreme Court in connection with review of
12 any Commission decision). All rights and remedies are limited to those available before the
13 California Public Utilities Commission.

14 15. The Settling Parties agree that the terms of this Settlement are fair and
15 reasonable under the circumstances and are binding on all parties to this proceeding.
16 Furthermore, pursuant to Rule 51.8 of Commission's Rules of Practice and Procedure
17 approval of this Settlement does not constitute approval of, or precedent regarding, any
18 principle or issue in the proceeding or in any future proceeding.

19 16. The Settling Parties agree that no signatory to this Settlement, nor any member
20 of the staff of the California Public Utilities Commission, assumes any personal liability as a
21 result of this Settlement. The Settling Parties agree that no legal action may be brought in any
22 state or federal court, or in any other forum, against any individual signatory, party
23 representative, or staff member related to this Settlement.

24 17. As part of the discussions which led to this settlement, PG&E has committed
25 that, in its future applications for Commission authorization to sell utility property pursuant to
26 Public Utilities Code section 851, PG&E will routinely include the following 851 Application
27 Information in a clear standard format:
28

APPENDIX

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- A table showing the sales price less the original cost (less depreciation), less expenses associated with the sale, and tax effects associated with the sale;
- A calculation of the decrease in rate base resulting from the sale;
- As needed, an explanation of other accounting/ratemaking features such as depreciation methodologies and deferred credits;
- A copy of any easement or other agreement pertinent to the sale;
- A brief description of the impacts (if any) of the proposed sale on electric restructuring, renewables, and air emissions;
- As needed, a copy of environmental/hazardous waste reports;
- Detailed labeling of analyses and computations.

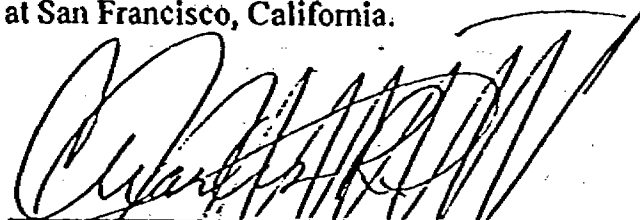
PG&E's and DRA's purpose in reaching this agreement is to facilitate understanding of future 851 applications, reduce the need for discovery, and shorten the time for proceedings.

18. The Settling Parties agree that any time after the Commission issues a decision adopting the Settlement, a Settling Party has the right to seek Commission modification of that decision (or modification of its terms in any other related proceeding). Other Settling Parties have the right to oppose or protest any such request. Nothing in this Settlement is intended to limit or expand any Settling Party's right, under Commission Rules and decisions, to petition to modify a decision adopting this Settlement, or to oppose or protest such a petition.

Dated this 29th day of July, 1996, at San Francisco, California.

Respectfully submitted,


Catherine A. Johnson


Charles R. Lewis, IV

Attorney for
DIVISION OF RATEPAYER ADVOCATES
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Telephone: (415) 703-1305
Facsimile: (415) 703-4432

Attorney for
PACIFIC GAS AND ELECTRIC COMPANY
P.O. Box 7442
San Francisco, CA 94120
Telephone: (415) 973-6610
Facsimile: (415) 973-0516

c:\data\winword\lewis\foster\settle-e.doc