

Decision 97-05-028 May 6, 1997 *

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company, a California corporation, and Berkeley Land Company, a California corporation, for an Order Authorizing the Former to Sell and Convey to the Latter a Certain Parcel of Land in Alameda County

(U 39 M)

ORIGINAL

Application 97-02-024
(Filed February 13, 1997)

OPINION

Summary

We approve the sale by Pacific Gas and Electric Company (applicant) of a 0.302-acre parcel of land located in Oakland (the Property) to Berkeley Land Company (Buyer) and the ratemaking treatment requested by applicant for this transfer.

Procedural Background

Applicant is a public utility subject to the jurisdiction of the Commission. On February 13, 1997, Applicant filed an application for authority to transfer the Property, which is located at the intersection of Telegraph Avenue and 51st Street in Oakland, California, to Buyer, which has constructed an adjacent neighborhood shopping center. Notice of the application was given in the Daily Calendar on February 25, 1997. The Office of Ratepayer Advocates filed a response in support of the application.

Discussion

No public utility may transfer its property that is necessary or useful in the performance of its duties to the public without first having secured the Commission's authorization. (Public Utilities (PU) Code § 851.) The Property is presently used for access to applicant's adjacent substation. Therefore, the Property is useful, and PU Code Section 851 applies.

Buyer offered to purchase the Property as part of its plans to provide parking for its commercial project. Applicant determined that it could retain easements sufficient

for its existing and projected needs for electrical, drainage, and surface access to the adjacent substation if it transferred ownership of the Property to Buyer. Applicant and Buyer entered into an agreement (Purchase Agreement) for sale of the Property to Buyer for \$75,000, subject to the approval of this Commission. The Purchase Agreement reserves to applicant an easement for existing electric lines, and such overhead and underground electric lines as applicant may require in the future. In addition, applicant reserves an easement for its existing underground storm drainage pipeline and the right to cross the Property to access the substation. Finally, the Purchase Agreement provides for an easement in favor of applicant for access to the substation over land adjacent to the Property owned by Buyer. As an interim measure, applicant permitted Buyer to construct parking and landscaping improvements on the Property in conjunction with Buyer's project.

No environmental site assessment has been conducted of potential contamination that may exist on the Property. Buyer and applicant have entered into a Release and Indemnity Agreement by which Buyer agreed to release applicant from claims based on any contamination that may be discovered in the future and to indemnify applicant from claims by third parties, including governmental authorities, that relate to such contamination.

Applicant caused an appraisal to be made of the fair market value of the Property, which was found to be \$26,000. This is slightly less than the original cost of the Property, \$29,170 (based on the pro-rata cost of the parcel of which the Property is a part), and much less than the \$75,000 price to be paid by Buyer under the Purchase Agreement.

Applicant represents that the 1997 revenue requirement associated with the Property is \$7,298, including property taxes, landscaping and maintenance costs, authorized cost of capital, taxes, franchise fees and an allowance for uncollectibles. In Decision 95-12-055, applicant's most recent General Rate Case, that revenue requirement was included as part of applicant's aggregate revenue requirement.

Applicant proposes to remove the \$29,170 cost of the Property from rate base and to book the net-of-tax proceeds (\$27,156) to a new memorandum account to be named

the Real Property Sales Memorandum Account. This amount would accrue interest at the three-month commercial paper rate. Following establishment of a Competition Transition Charge (CTC) Revenue Account, applicant would transfer the balance in the Real Property Sales Memorandum Account to the CTC Revenue Account, with the effect of reducing the amount ratepayers would otherwise be required to pay in nonbypassable rates.

Under the California Environmental Quality Act (CEQA), we are obligated to consider the environmental consequences of projects, as defined, that are subject to our discretionary approval. (Public Resources (PR) Code § 21080.) The City of Oakland Planning Commission has prepared a negative declaration for the Buyer's retail project, which encompasses all of the foreseeable indirect physical changes that might arise from the transfer of the Property. Accordingly, no further consideration of environmental consequences on our part is required.

Findings of Fact

1. Applicant is an electric utility subject to the jurisdiction of the Commission.
2. Applicant has agreed to sell the Property to Buyer.
3. The Property is presently used for access to applicant's substation.
4. The Purchase Agreement reserves sufficient rights in the Property to permit applicant to maintain its substation without the necessity for owning the Property in fee simple.
5. The City of Oakland Planning Commission has prepared a negative declaration for the Buyer's retail project (Case File ER94-32).

Conclusions of Law

1. Transfer of the Property is subject to PU Code Section 851.
2. If transfer of the Property does constitute a project for CEQA purposes, the City of Oakland Planning Commission's negative declaration for the Buyer's project encompasses all of the foreseeable indirect physical changes that might arise from the transfer of the Property.
3. Transfer of the Property should be approved.

4. Following transfer of the Property, applicant should remove the \$29,170 cost of the Property from rate base and book the net-of-tax proceeds to a new memorandum account to be named the Real Property Sales Memorandum Account, which should accrue interest at the three-month commercial paper rate. Following establishment of a CTC Revenue Account, applicant should transfer the balance in the Real Property Sales Memorandum Account to the CTC Revenue Account.

5. If the CTC Revenue Account is not approved, applicant should file an application with a proposal for disposition of the amounts in the Real Property Sales Memorandum Account.

ORDER

IT IS ORDERED that:

1. Pacific Gas and Electric Company (applicant) may transfer to the Berkeley Land Company the real property (Property) described in the application, subject to the terms and conditions described therein.

2. Following transfer of the Property, applicant shall remove (a) the \$29,170 cost of the Property from rate base and book the net-of-tax proceeds to a new memorandum account to be named the Real Property Sales Memorandum Account, which shall accrue interest at the three-month commercial paper rate (and, following establishment of a Competition Transition Charge (CTC) Revenue Account, applicant shall transfer the balance in the Real Property Sales Memorandum Account to the CTC Revenue Account), and (b) all expenses associated with the property, along with associated taxes, franchise fees, and uncollectibles, from its revenue requirement.

3. If the CTC Revenue Account is not approved, applicant shall, within 90 days of the date of a final decision in the proceeding in which applicant's request for such account is pending, file an application with a proposal for disposition of the amounts in the Real Property Sales Memorandum Account.

4. The authority granted hereby expires if not exercised within one year of the date of this order.

A.97-02-024 ALJ/RC1/wav

5. Application 97-02-024 is closed.

This order is effective today.

Dated May 6, 1997, at San Francisco, California.

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners