

Decision 97-07-019 July 16, 1997

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company, a California corporation, for an Order Authorizing the Transfer of the Photovoltaics For Utility Scale Applications Research Project in Yolo County to the Energy Resources Conservation and Development Commission of the State of California.

Application 97-01-005  
(Filed January 3, 1997)

(Electric)

(U 39 M)

**ORIGINAL**

**OPINION**

**Summary**

We will approve the sale by Pacific Gas and Electric Company (applicant) of certain electrical facilities to the Energy Resources Conservation and Development Commission of the State of California (CEC) and approve the ratemaking treatment requested by applicant for this transfer.

**Procedural Background**

Applicant is a public utility subject to the jurisdiction of the Commission. On January 3, 1997, applicant filed an application for authority to transfer the Photovoltaics for Utility Scale Applications Research Project in Yolo County (the Facilities) to the CEC. Notice of the application was given in the Daily Calendar on January 7, 1997. No protests were filed.

**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 Facilities are presently used to generate electricity for delivery to applicant's system. Therefore, the Facilities are useful, and PU Code § 851 applies.

According to applicant, since 1986, the Facilities have been a part of a national research project established to demonstrate the potential for utilities to harness the power of the sun to generate electrical energy. Applicant has managed the Facilities with the support and participation of fifteen other utilities and energy-related agencies, including CEC. The Facilities are located on a 86-acre site leased from the City of Davis, California until 2007.

Although the primary purpose of the Facilities has been research, the electrical energy produced has been used by applicant, which estimates a current energy value (for approximately 1,000 megawatt hours per year) of \$20,000 per year and a current capacity value of approximately \$12,000 per year. However, the costs to applicant of operating and maintaining the Facilities and conducting photovoltaic experiments there is at least \$230,000 per year. Accordingly, considered solely as a source of electricity, the Facilities are not cost-effective.

Applicant believes that it has derived significant data and expertise from its involvement in the Facilities, but that minimal additional research value remains to the applicant alone, and the Facilities do not materially contribute to the provision of utility service to customers. Applicant considered decommissioning the Facilities, selling the Facilities to a buyer that wished to operate them for electrical generation, and selling the Facilities to a buyer that wished to continue operating them for research purposes.

Applicant rejected the notion of decommissioning the Facilities. It estimated that it would be able to liquidate the personal property associated with the Facilities for net proceeds of approximately \$532,000 (after commissions and auction costs). After deducting the net present value of remaining lease payments and the cost of restoration of the real property to its original state, net proceeds would be approximately \$190,000.

It was considered highly unlikely that any buyer could be found for the Facilities as an electrical generation station, because of the high cost of operating the Facilities compared to the relatively modest value of energy and capacity produced annually.

CEC and others currently participating in the research activities of the Facilities expressed an interest in acquiring the Facilities for continued research purposes. Applicant and CEC have entered into a Purchase and Sale Agreement (Agreement),

subject to Commission approval, pursuant to which CEC would acquire all of applicant's right, title, and interest in and to the Facilities for the nominal sum of \$1.00. Under the Agreement, applicant would receive excess power and capacity from the Facilities and would pay an annual membership fee of \$28,000 for the first two years (prorated the first year). For the third and subsequent years, applicant will pay CEC an amount comparable to what applicant would pay to a qualifying facility under a power purchase agreement.

The Agreement provides applicant and CEC shall be responsible for costs of environmental remediation arising from contamination occurring before and after, respectively, the transfer of the Facilities. An environmental site assessment conducted in 1995 indicated no evidence of leaks or spills and no need for any remedial action.

Applicant caused appraisals to be made of the fair market value of the Facilities, including applicant's interest in the remaining 11-year term of the leasehold, and intellectual property rights associated with the research project. The estimated fair market value of the Facilities is \$3,624,000, the estimated fair market value of remaining leasehold term is \$623,000, and the estimated fair market value of intellectual property is \$363,000. Applicant's share of investment in the Facilities (exclusive of the leasehold and intellectual property) has been approximately \$3,300,000.

Applicant intends to claim as a charitable contribution the difference between the fair market value of the Facilities and the sum of (i) the purchase price under the Agreement, and (ii) the approximately \$60,000 value to applicant of research results that it will continue to receive. The resulting tax benefit of \$1,867,547 will be credited to ratepayers through the Research and Development (R&D) one-way balancing account by which applicant has been funding its participation in the Facilities.

CEC intends to delegate the continued operation of the Facilities to the Sacramento Municipal Utilities District. Applicant would transfer to CEC a variety of permits and licenses issued by Yolo County, the Occupational Safety and Health Administration, and other governmental authorities, none of which appear to require a discretionary review.

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.) Since our review under PU Code § 851 clearly requires the exercise of our discretion, we must consider whether the transfer of the Facilities is a "project."

A project is an "activity" that (1) "may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment" and (2) is either (a) directly undertaken by any public agency, (b) is supported by contracts, grants, subsidies, loans or other forms of assistance from one or more public agencies, or (c) involves the issuance of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies. (PR Code § 21065.)

CEC is a public agency. (See PR Code § 21063.) It will be undertaking the operation of the Facilities and, presumably, underwriting the costs of operating it. However, to that extent, it has its own CEQA responsibilities. We concern ourselves here only with whether our permission for the transfer of the Facilities involves the issuance of an "entitlement for use," and, if so, whether the transfer of the Facilities is an "activity" within the meaning of CEQA and, if it is, whether it may cause direct or foreseeable indirect physical change in the environment.

Our order is legally necessary to effectuate the transfer of the Facilities. (PU Code § 851.) Without it, any purported transfer is void as a matter of law. (*Id.*) Therefore, our permission for the transfer of the Facilities necessarily involves the issuance of an "entitlement for use." The transfer of the Facilities, being the event that we are asked to approve, does not cause any direct physical change in the environment, because that transfer is a purely legal happening.<sup>1</sup>

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<sup>1</sup> We note that were we being asked to approve the issuance of a certificate of public convenience and necessity for the construction of a new transmission line in connection with the transfer of the Facilities, we would be able to conclude that there may be a direct change in the physical environment as a result of that approval.

The question thus resolves itself as to whether there are any foreseeable *indirect* physical changes in the environment to be anticipated. In the absence of any substantial evidence in the record that CEC has the present intention of operating the Facilities in a different manner than applicant has in the past, we are unable to foresee any indirect physical changes in the environment. We conclude, therefore, that the application does not involve a project within the meaning of CEQA.

**Findings of Fact**

1. Applicant is an electric utility subject to the jurisdiction of the Commission.
2. Applicant has agreed to sell the Facilities to CEC.
3. The Facilities are presently used for research, and generate a minor amount of electricity as a byproduct.
4. No physical changes are required to accommodate the transfer of the Facilities to CEC.

**Conclusions of Law**

1. Transfer of the Facilities is subject to PU Code § 851.
2. Transfer of the Facilities does not constitute a project for CEQA purposes.
3. Transfer of the Facilities should be approved.
4. Applicant should adjust the R&D balancing account by an amount equal to the tax benefit realized in connection with the transfer.

**O R D E R**

**IT IS ORDERED that:**

1. Pacific Gas and Electric Company (applicant) may transfer to the Energy Resources Conservation and Development the facilities described in the application.
2. Applicant shall adjust the Research and Development balancing account by an amount equal to the tax benefit it realized in connection with the transfer.

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

4. Application 97-01-005 is closed.

This order is effective today.

Dated July 16, 1997, at San Francisco, California.

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners

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