

Decision 97-11-019 November 5, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC
COMPANY for Authorization to Sell the Placer
County Canal System to Placer County Water Agency
Pursuant to Public Utilities Code Section 851.
(Water) (U 39 W)

ORIGINAL
Application 96-03-051
(Filed March 27, 1996)

OPINION

Procedure

Pursuant to Public Utilities (PU) Code § 851 et al., Pacific Gas and Electric Company (PG&E) requests authority for PG&E to sell to Placer County Water Agency (PCWA) the Placer County Canal System (System) located in Placer County. As part of this application, PG&E also requests that the Commission (1) approve certain water delivery arrangements between PG&E and PCWA, (2) relieve PG&E of its duty to operate the System and of related public utility water obligations, and (3) approve applicant's requested ratemaking treatment. With this sale, PG&E will no longer be in the retail water business.

A late-filed protest to the application was filed on October 2, 1996 by Simpson Ranch, a California Limited Partnership, and was accepted. Efforts by PG&E and protestant to resolve the protest were unsuccessful, and a prehearing conference was held on April 25, 1997.

After further correspondence, the matter was submitted for decision on July 14, 1997.

Transfer Agreement

The terms and conditions of the proposed sale are contained in a document attached to the application titled 1995 Transfer Agreement Between Pacific Gas And Electric Company And Placer County Water Agency (Transfer Agreement).

Under the Transfer Agreement, final and unconditional Commission approval of the proposed sale is a condition precedent to the closing of the sale. The closing of the sale is scheduled to take place within 60 days after the Commission has given its final and unconditional approval.

The System consists of about 6.2 miles of irrigation canals and associated facilities located in Placer County, as follows: Ragsdale Random Canal and Tunnel, Lower and Middle Fiddler Green Canals, and Upper Bowman Canal. A three-acre piece of land held in fee by PG&E will be part of the transfer. The transfer also includes additions and betterments placed in service up to the closing date, inventories of materials and supplies, and certain easements, rights of way, permits, and licenses. A detailed description of the property to be sold is contained in the Transfer Agreement.

The total purchase price for all of the property to be sold is \$1.00.

The Transfer Agreement contains four provisions regarding arrangements for the delivery of water that are made necessary by the proposed sale of the System. First, the PCWA agrees to transport PG&E and Nevada Irrigation District water in the System. Second, PG&E and PCWA agree to certain amendments to the 1968 Water Supply Contract. Third, PG&E and PCWA agree to the transfer of PG&E's water supply obligations under Article 14 of the 1968 Water System Sale Contract. (Background on the two 1968 contracts in following section.) And fourth, the Transfer Agreement gives PCWA the right to construct a Bear River Canal point of delivery. In this application, PG&E also is requesting approval of these four provisions regarding water delivery arrangements.

PG&E's Placer County Water Operations

Until 1968, PG&E owned and operated the Placer Water System in Placer County. PG&E had acquired this retail water company when it acquired the Drum-Spaulding Hydroelectric Project, FERC No. 2310. In 1968, PG&E and PCWA entered into two agreements: (1) a contract for the sale by PG&E to PCWA of the part of the Placer Water System known as the Lower Drum Division Water System, sometimes referred to as the South Placer Water System, in the Auburn-Rocklin area (1968 Water

System Sale Contract); and (2) a contract between PG&E and PCWA for PG&E to supply PCWA on a wholesale basis with specified amounts of water at determined rates (1968 Water Supply Contract, sometimes referred to as the Zone 1 Water Supply Contract). The Commission in Decision (D.) 74617 (68 Cal. P.U.C. 649) authorized PG&E to sell the Lower Drum Division Water System to PCWA under the terms of the 1968 Water System Sale Contract and to carry out the terms of the 1968 Water Supply Contract. The transfer of the Lower Drum Division Water System was made October 29, 1968. Copies of D.74617, the 1968 Water System Sale Contract, and the 1968 Water Supply Contract are attached to the application.

Reasons for Proposed Sale

PG&E wants to sell the System to PCWA to be relieved of the duty to operate the System and of related public utility water obligations and to withdraw from the retail water business. Water service is not a core business for PG&E, and with this sale PG&E will no longer be in the retail water business. Of the 6.2 miles of canals to be sold, 1.9 miles is used solely to serve irrigation water to retail customers, and the remaining 4.3 miles is used solely to meet the company's wholesale water supply commitments to PCWA under the 1968 Water Supply Contract and to Nevada Irrigation District under the July 12, 1963 Yuba-Bear Consolidated Contract.

Moreover, PG&E currently is collecting its full revenue requirement for these facilities from its wholesale (namely, PCWA) and retail water customers. PG&E's annual revenue requirement associated with the System is approximately \$104,000 for retail and wholesale water deliveries, while water delivery revenues from the System on average are about \$40,000 per year. Selling the System will eliminate both PG&E's retail revenues and its operating expenses, and it will reduce wholesale revenues from the current average annual level of about \$37,000 to an average annual level of about \$8,000. If PG&E holds and continues to operate the System, it will have to spend an average of approximately \$75,000 annually in capital expenditures for improvements over the next 20 years. Thus, the average annual cost of not selling the System is

expected to increase over time while future revenues would remain approximately at the current level, absent any rate increase to the 20 retail customers.

In 1982, PG&E and PCWA entered into an agreement with PCWA to sell most of the remaining Placer Water System, known as the Upper Placer Water System, in the area between Alta and Auburn (1982 Water System Sale Contract, sometimes referred to as the Zone 3 Water System Sale Contract). The Commission in D.83-12-051 (13 Cal. P.U.C. 2nd 594) authorized PG&E to sell the Upper Placer Water System to PCWA. The transfer was made on February 17, 1984. A copy of D.83-12-051 is attached to the application, as well as a copy of the 1982 Water System Sale Contract.

Since 1984, PG&E has furnished water service from the System for irrigation and general purposes. The current tariff for the System, including a map, is also attached to the application. As of December 31, 1995, PG&E was serving 12 active retail irrigation water accounts and eight inactive accounts under this tariff. When the proposed sale takes place, the customers will be transferred to PCWA and PG&E will request that the entire tariff be withdrawn.

Placer County Water Agency

PCWA is a public agency organized and existing under the Placer County Water Agency Act (Statutes of 1957, Ch. 1234, as amended—West's Water Code Appendix, Ch. 81).

PCWA is not subject to the jurisdiction of the Commission. PCWA joins in this application for the limited purpose of satisfying the requirements of Rule 35 of the Commission's Rules of Practice and Procedure (signatures of all parties to the transaction are required in the application).

PCWA's primary reason for buying the System is to complete the third and final phase of an overall transfer of the Placer Water System from PG&E that began with PCWA's purchase of the Lower Drum Division Water System in 1968 and continued with PCWA's purchase of the Upper Placer Water System in 1984. PCWA believes that local ownership is in the best interest of the System and the customers.

Transfer of the property to be sold will not affect PG&E's electric generation. There are no significant environmental impacts associated with the proposed sale. It is not known whether sale to PCWA or retention by PG&E would produce lower water service rates.

Proposed Ratemaking Treatment

The total original cost of the System is \$733,000. As of September 30, 1995, the book value of the System was \$445,000. The purchase price is \$1.00, to be paid at the closing of the sale.

The System currently is in PG&E's Water Department Rate Base. The System assets are recorded in Accounts 2040, 2041, and 2042, which are water plant accounts for PG&E's plant.

Because the proposed sale is the sale of a utility system, the entire loss of \$445,000 on the sale should accrue to PG&E's shareholders. Accordingly, at the time of the sale, gross plant of \$733,000 should be reduced by the historical cost of the property sold, the depreciation reserve for these accounts of \$288,000 should be reduced to zero, and the loss should be recorded to a nonutility account (miscellaneous nonoperating income). The loss is equal to the \$1.00 of proceeds from the sale minus the net book value of \$455,000, which is the gross plant in excess of the depreciation reserve.

Consistent with this ratemaking approach, PG&E's shareholders will absorb any tax benefit or liability associated with the sale, any indemnity payments or other liabilities arising from the sale, and any environmental costs associated with the sale or associated with the property after the sale, to the extent such benefits, liabilities, payments, or costs are the responsibility of PG&E.

Public Interest

The relevant inquiry in an application for transfer is whether the transfer will be adverse to the public interest. (Re Universal Marine Corporation (1984) 14 Cal. P.U.C. 2d 44, 646.) The proposed sale of the System by PG&E to PCWA under the terms and conditions in the Transfer Agreement is in the public interest because the sale is cost

effective for PG&E and because PCWA is most appropriately situated to provide consumptive water service in the area.

Prior Commission Proceeding

The Commission has earlier approved sale by PG&E to PCWA of the Upper Placer Water System.

In that proceeding under PU Code § 851, the Commission granted PG&E's request for ex parte treatment and found that no evidentiary hearing was necessary, after noting that the PCWA Board of Directors had passed a resolution approved the purchase and that public hearings were held in Placer County regarding the purchase (D.83-12-051). In the instant proceeding, the PCWA Board of Directors passed Resolution No. 95-38 on December 21, 1995, authorizing actions necessary to complete the proposed purchase. After giving all water service customers notice and an opportunity to be heard regarding the proposed purchase, PCWA held a public hearing in Auburn on March 21, 1996.

In approving the transfer of the Upper Placer Water System on an ex parte basis, the Commission ordered that PCWA should assume any liability for refunds of main extension advances and ordered PG&E as follows: to notify all customers of the transfer and its effective date by bill insert or separate letter; before the transfer, to refund any customer credit deposits which were subject to refund; and, within 10 days after the transfer, to write the Commission transmitting a copy of the transfer documents stating the dates of transfer, of deposit refunds, and of commencement of operations by PCWA (D.83-12-051). PG&E and PCWA agree to comply in this System sale with the same requirements ordered for the Upper Placer Water System sale.

Protest of Simpson Ranch

Richard Simpson, on behalf of Simpson Ranch, a California Limited Partnership, filed a protest in this proceeding for the purpose of preserving certain rights to water it allegedly holds. Although it presently takes no water from the System, Simpson Ranch contends that it holds contractual water rights with PG&E. PG&E denies that Simpson

Ranch holds contractual water rights and states that it has treated protestant as a tariffed Placer Water System customer since 1963.

Simpson Ranch's protest asks that:

"those parts of Application A. 96-03-051 concerning Simpson Ranch/Bear River Canal Water/PG&E Contracts be excluded and completely freed from any water facility sale accomplished between PG&E and PCWA. And, that this be so designated in the final PUC decision, thus in turn freeing the two parties to accomplish their goals unencumbered by Simpson Ranch rights and needs."

A prehearing conference was convened to explore the possibility of crafting an ordering paragraph which would satisfy both protestant and PG&E, but mutually acceptable language has not been forthcoming.

PG&E's letter of July 3, 1997 sets forth its view of Simpson Ranch circumstances. The letter, in part, states as follows:

"Regarding the substance of this matter, it should be noted that, according to PG&E's records, Simpson Ranch has not been an active account since 1989. Nevertheless, PG&E believes that Simpson Ranch currently is a retail water utility customer (albeit inactive) served by the Placer Water System under PG&E's Placer Water System tariff (included at tab I of PG&E's March 27, 1996 Application). PG&E bases this belief on the Receipt And Release entered into by the Simpsons and PG&E on October 14, 1963 (included at attachment D of Simpson Ranch's September 30, 1996 Protest). In particular, the letter dated October 8, 1962 from PG&E to Mr. V. E. Simpson, attached to the Receipt And Release as Exhibit B, states in part as follows:

'...all water delivered to the Simpson property by the Company in the future will be in accordance with the Company's filed rates, rules and regulations for the Placer Water System. ..."

"In accordance with this language, since 1963 PG&E has treated Simpson Ranch as a tariffed Placer Water System customer.

"If in fact Simpson Ranch is a tariffed Placer Water System customer, then upon transfer of the System to Placer County Water Agency, the Agency will undertake the distribution of water from the System to Simpson Ranch and PG&E will be relieved of all its public utility obligations to Simpson Ranch in connection with the System (see paragraph 7 of the 1995 Transfer Agreement, included in PG&E's Application at tab A).

"At the same time, PG&E recognizes that the Placer Water System as described in PG&E's tariff specifically excludes the Bear River Canal on which the Simpson Ranch is located (Tariff Sheet No. 1380-W, paragraph 1 of Preliminary Statement, and Tariff Sheet No. 1381-W, map of Placer Ditch System). We believe that this exclusion from the tariff was a PG&E oversight. In any event, if, based on the tariff, Simpson Ranch in fact is *not* a tariffed Placer Water System customer, then the Agency will not take on the obligation to serve Simpson Ranch upon transfer of the System to the Agency. Moreover, since PG&E's Placer Water System tariff will be eliminated at the time of the transfer, there will be no rates, rules or regulations in accordance with which PG&E will be obligated under the Receipt and Release to deliver water to the Simpson Ranch. Any resumption of water service by PG&E to Simpson Ranch would not be a matter for this Commission.

"In PG&E's view, whether Simpson Ranch is or is not a tariffed retail water utility customer served by the System is not a question the Commission needs to address in approving the transfer of the System from PG&E to PCWA. However, if the Commission concludes that a ruling on this question is necessary, then PG&E does not oppose either outcome."

Simpson Ranch, for its part, does not agree to PG&E's assessment of its circumstances. Rather, protestant claims that it holds contractual rights to water from PG&E and requests that its claims be specifically excluded from the Commission order approving the transfer.

If PG&E's analysis is correct, we concur that the reasons given show that the Commission need not decide whether or not Simpson Ranch is a tariffed customer in approving the transfer. Alternatively, if Simpson Ranch chooses to pursue its legal claims against PG&E, the Commission will have no jurisdiction of the matter, and its decision approving the transfer will not affect such potential litigation.

Therefore, we will deny the protest of Simpson Ranch for the reason that specific exclusion of Simpson Ranch/Bear River Canal Water/PG&E contracts from the order approving transfer is unnecessary to the preservation of protestant's alleged rights.

Intervenor's Fees

Protestant Simpson Ranch filed a Notice of Intent to Claim Compensation in Accordance with §§ 1801 et. seq. of the Public Utilities Code on August 15, 1997.

PG&E filed a Response on August 27, 1997 arguing that the Notice of Intent, being filed more than 30 days after the April 25, 1997 prehearing conference, was defective in that it was filed too late.

Simpson Ranch replied to PG&E's Response by arguing that the prehearing conference was not concluded on April 25, 1997, but was continued to a date to be set. No further dates were set for the prehearing conference, and the proceeding was submitted for decision on July 14, 1997.

We need not decide the issue of the timeliness of protestant's filing because we have held that a complainant acting solely in an individual capacity and seeking a personal remedy is not entitled to claim compensation as an intervenor in a Commission proceeding as provided in §§ 1801-1808 of the Public Utilities Code (D.95-10-050). As Simpson Ranch states, its protest was filed so that it could retain a status quo relationship with PG&E, a personal remedy considered beneficial to it by protestant.

Findings of Fact

1. PG&E, a public utility, and PCWA, a public agency not subject to Commission jurisdiction, have agreed to the sale and transfer of PG&E's PCWA and associated rights in accordance with the terms and conditions of the 1995 Transfer Agreement.
2. The Transfer Agreement includes water delivery arrangements between PG&E and PCWA.
3. There is a loss on the sale which will be charged to PG&E shareholders pursuant to the criteria established in D.89-07-016.
4. The sale, transfer, and water delivery arrangements are uncontested and are not adverse to the public interest.
5. The protest of Simpson Ranch that it be specifically excluded from the order approving the 1995 Transfer Agreement is unnecessary to the preservation of protestant's alleged rights.
6. A public hearing is not required.

Conclusion of Law

The application should be granted.

O R D E R

IT IS ORDERED that:

1. On or before December 31, 1997, Pacific Gas and Electric Company (PG&E) may transfer the water system referred to in the application to Placer County Water Agency (PCWA) in accordance with the terms and conditions of the 1995 Transfer Agreement Between Pacific Gas and Electric Company and Placer County Water Agency.
2. On or before the date of transfer, PG&E shall notify all customers of the transfer and its effective date by bill insert or separate letter.
3. Prior to the transfer, PG&E shall refund any customer deposits which are subject to refund.
4. Within 10 days after the transfer, PG&E shall inform the Commission in writing of the dates of transfer, of deposit refunds, and of commencement of operations by PCWA. PG&E shall submit a copy of the transfer documents to the Commission.
5. PG&E shall comply with the water delivery arrangements in the Transfer Agreement.
6. PG&E shall record the transfer for ratemaking treatment as set forth in the application.
7. The protest of Simpson Ranch is denied.
8. Upon compliance with this order, PG&E shall be relieved of its public utility obligation to the transferred system.

A.96-03-051 ALJ/WRI/bwg

9. Application 96-03-051 is closed.

This order is effective today.

Dated November 5, 1997, at San Francisco, California.

P. GREGORY CONLON
President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners