

Decision 97-12-031 December 3, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC COMPANY, a California corporation, and TYEE DEVELOPMENT CO., LLC, for an Order Authorizing the Former to Sell and Convey to the Latter a Certain Parcel of Land in Alameda County Pursuant to Public Utilities Code Section 851. (U 39 E)

Application 97-05-013
(Filed May 8, 1997)

ORIGINAL

OPINION

Pacific Gas and Electric Company (PG&E or Seller) and TYEE Development Co., LLC (TYEE or Buyer) jointly apply for authority to transfer a parcel of land located in the City of Fremont, Alameda County (the Property) pursuant to a Standard Purchase and Sale Agreement dated July 30, 1996 (the Agreement) and for approval of the ratemaking treatment proposed for the transfer.

Notice of the application was given in the Daily Calendar on May 12, 1997. No protests have been received, and the Office of Ratepayer Advocates (ORA) filed a response in support of the application.

Applicants

Since October 10, 1905, PG&E has been an operating public utility corporation, organized under the laws of the State of California, engaged principally in the business of furnishing gas and electric service in California.

TYEE is a California limited liability company. TYEE plans to construct an industrial warehouse building on the Property with the necessary parking therefor.

The Agreement is between PG&E and two individuals, Casimir Szlendak and Paul Mackin. Szlendak and Mackin, along with a third party, have since formed TYEE, which will take title to the Property.

The Property

The Property consists of approximately 7.3 acres located on Boscell Road in the City of Fremont, and is designated as Alameda County Assessor's Parcel Numbers 531-221-22-01 and 531-221-27-01.

The application states that, as part of PG&E's ongoing efforts to identify properties for sale and disposition, the Property was identified as a candidate for disposition. Aside from two electric transmission lines which traverse the northwestern portion of the Property, PG&E does not otherwise make use of the Property. With adequate easements reserved for the electric lines, it is not foreseeable that the Property will ever again be useful for public utility purposes.

Based on the analysis described above, it was determined that PG&E did not need to maintain ownership of the Property in fee and, as a matter of law, the fee interest in the Property could be declared surplus if PG&E entered into an agreement whereby a public utility easement was created retaining all rights necessary for maintenance and operation of the existing electric lines. PG&E also believes that by exchanging unused fee interests for easements and by removing the book value of the fee interests from rate base, PG&E would be able to maintain service at a reduced cost.

PG&E will be reserving an easement to protect both of the existing electric lines. This easement will also allow PG&E the right to construct future facilities therein.

The easement reserves to PG&E sufficient express rights for operation and maintenance of all existing and future facilities, along with all the secondary (common law) rights which may be necessary for the full enjoyment of the primary grant. It expressly reserves to PG&E the right to reconstruct, replace, remove, maintain, and use the existing facilities, together with the right to excavate for, construct, install, repair, reconstruct, replace, remove, maintain, and use additional facilities for the transmission and distribution of electric energy and for communication purposes as PG&E may, from time to time, deem necessary. This would include rights for overhead pole and power lines and underground lines.

The secondary rights which are being reserved include the right of ingress to and egress from the easement area, the right to control trees and brush lying within the

easement area or adjacent to the easement area, the right to prohibit the construction of any building or other activity in and around the easement area which might interfere with PG&E's operations, and a provision that all successors and assigns of the parties are bound by the terms of the easement and that all covenants shall apply to and run with the Property. In addition, PG&E relies on any other common law rights that it may possess as the holder of an easement and that may be reasonably necessary to fully preserve the ratepayer interest in reliable electric facilities and service.

Easements created by reservation, as here, are permanent covenants on the servient tenement (the Property) and cannot be extinguished by any act of Buyer or its successors in interest. Generally, public utility easements, such as the one at issue here, are said to "run with the land" for the life of the public utility facilities including however long that life may be extended with ordinary maintenance and replacement programs of the utility. Since, with normal routine maintenance, the public utility facilities will be expected to last forever, the easements too are considered permanent and would last forever.

In reserving this easement, PG&E has considered whether the easement is sufficient not only for present but for all foreseeable future needs. The rights retained by PG&E in the proposed easement are sufficient for all present and future public utility needs. Specifically, the easement reserves to PG&E the rights for its existing facilities as well as for additional facilities in the future. Because PG&E believes that the easement is sufficient for all foreseeable future needs, any cost due to any expansion to the easement which is not funded by new customers pursuant to the tariffs will be borne by the company and will not be reflected in rates.

Buyers or any successors in interest would acquire all rights incident to fee ownership subject to the express and implied covenants in the deed.

Environmental Matters

As part of the Agreement, PG&E disclosed that at some time during its ownership of the Property, PG&E may have handled, treated, stored, or disposed of hazardous substances on or adjacent to the Property. Pursuant to the Agreement,

Buyer acknowledges that no report regarding hazardous materials was provided by PG&E, that it has the right to investigate the Property, and that PG&E will not be responsible to Buyer for the presence of hazardous materials either on or affecting the Property.

Buyer has agreed to execute and deposit with the title company prior to the close of escrow a Release and Indemnity Agreement containing a general release in which it waives and relinquishes any and all rights it may have under Section 1542 of the California Civil Code, which reads as follows: "A general release does not extend to claims which a creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

Based on the Agreement and the general release contained in the Release and Indemnity Agreement, the parties do not expect any claim for environmental damage which may affect PG&E or its ratepayers after the close of escrow.

Purchase and Sale Agreement

The terms and conditions of the proposed sale are contained in the Agreement. Under the terms of the Agreement, PG&E will sell and convey to Buyer the Property, all easements, rights, and privileges appurtenant thereto, and all warranties and other agreements related thereto. The purchase price of the Property is \$781,200.

The most recent appraisal of the Property indicates an estimated market value of \$714,500. The purchase price of \$781,200 is well above the estimated market value. The closing period for the transaction is 14 days from the date PG&E receives final approval for the sale from the Commission pursuant to Section 851 of the Public Utilities Code.

Proposed Ratemaking

Based on property taxes of \$19,211; maintenance costs of \$500; and PG&E's authorized cost of capital (11.60% on equity; 9.45% on rate base), the 1997 revenue requirement, including taxes, franchise fees, and an allowance for uncollectibles, is \$32,589. The costs related to the Property are recovered through base rates as determined in a General Rate Case (GRC).

Because the revenue requirement determined in a GRC is authorized at an aggregate level, it is impossible to specifically identify these costs in a GRC decision. Nevertheless, these costs are presently included in rates since they are embedded in PG&E's adopted rate base and maintenance and office expense estimates. Therefore, in this case, the Property's \$32,589 revenue requirement is included in the GRC revenues ordered by Decision (D.) 95-12-055 (PG&E's 1996 test year decision).

Pursuant to the Agreement, PG&E is reserving an easement for any existing or proposed facilities. This easement, retaining all rights necessary for maintenance and operation of the existing and any future electric facilities, will have no effect on PG&E's rate base. Additionally, by selling the Property with the appropriate easement, it allows PG&E to avoid maintenance costs on fee ownership property that was being underutilized for utility purposes.

In order to be competitive in an open market, PG&E states that it will continue to seize the opportunity to reduce its cost-of-service by selling all, or portions of, underutilized properties such as the Property. It is to this end that PG&E desires to shorten the Commission's review and approval process by presenting consistent ratemaking treatment in such sales. In its application to sell land at the former site of a reservoir known as Lake Van Norden (Application (A.) 96-06-009), PG&E proposed a mechanism to permit the sale of surplus land (the underutilized fee interest) while ensuring that PG&E retain adequate easement rights on the property. Furthermore, the Lake Van Norden application proposed that the net after-tax gain be credited to the Real Property Sales (RPS) Memorandum Account, and eventually to a proposed Competition Transition Charge (CTC) Balancing Account.¹ The Lake Van Norden application was approved by the Commission in D.97-04-024. The ratemaking

¹ In D.97-06-060, we authorized PG&E and other utilities to take steps to set up Transition Cost Balancing Accounts that include the functions PG&E proposed for its CTC Revenue Account. We will use the terminology of D.97-06-060 in the remainder of this decision.

proposed in this application for the sale of the Property is the same as in the Lake Van Norden application.

The Property currently is in PG&E's rate base. PG&E proposes that the \$88,856 cost of the Property would be removed from rate base. PG&E proposes to book the net-of-tax proceeds to the RPS Memorandum Account. This amount would accrue interest at the three-month commercial paper rate. Then, following establishment of the Transition Cost Balancing Account, PG&E would transfer the entire balance, including interest, in the RPS Memorandum Account to the Transition Cost Balancing Account.

In summary, PG&E proposes to:

- Retire the asset from rate base.
- Book the net-of-tax proceeds to the RPS Memorandum Account.
- Accrue interest on the balancing account at the commercial paper rate.
- Transfer the monies in the RPS Memorandum Account to the Transition Cost Balancing Account once it is established.

The initial journal entry required to achieve the ratemaking treatment outlined above would be as follows:

Debit - Cash	\$734,328
Credit - Land	\$ 88,856
Credit - Balancing Account	\$382,468
Credit - Tax Liability	\$263,004

PG&E believes that this proposed ratemaking treatment is consistent with the Commission's history of finding that ratepayers have an interest in the gains on the sale of property, and that by applying the after-tax proceeds to the Transition Cost Balancing Account, it also provides incentive to PG&E to maximize the potential gain on the sale of the land.

The sale of the Property will result in a reduction of the transition cost responsibility for ratepayers of PG&E. The ratemaking mechanism proposed in this application is consistent with the ratemaking mechanism proposed in PG&E's

A.96-08-070 filed with the Commission and embraces the Commission's goal of having a rapid and smooth transition to retail electric competition.

Office of Ratepayer Advocates

ORA recommends approval of the application as follows:

"1. The sale of the Property should be approved. However, ORA recommends that the Commission explicitly cite PG&E's intention to have shareholders bear any costs associated with the expansion of easements that are not recoverable under applicable tariffs, and state that such costs shall include costs associated with any environmental concerns which arise, as condition of approving the sale and transfer of the Property.

"2. The Commission should adopt PG&E's proposal to transfer, with interest the net-of-tax proceeds of \$382,468 and booked into the RPS Memorandum Account and subsequently to the [Transition Cost Balancing] Account, such that the proceeds and interest will be netted against the balance there.

"3. The Commission should adopt PG&E's proposal to reduce its base revenue requirement by \$32,589 in its next general rate case, which will be filed later in 1997.

"4. The Commission should require PG&E to provide, within 10 days of the actual transfer of the Property, written notification of the date on which the transfer was consummated, including a copy of the instrument effecting the transfer. This notification should be provided both to the Commission and to ORA."

Findings of Fact

1. PG&E provides public utility electric service in many areas of California, and in meeting its service obligations over the years has acquired numerous parcels of land which have been used and useful in its provision of service.

2. With the passage of time PG&E's requirement of full use of some of these parcels has diminished, and PG&E has determined that its present and future requirements on some of these parcels can now and for the future be met by retention of easement rights while disposing of the basic fee interests in these parcels.

3. By selling unused fee interests in such properties and retaining easements, the book value of these fee interests can be removed from rate base, enabling PG&E to maintain customer service at reduced costs.

4. The Property consisting of 7.3 acres located on Boscell Road in the City of Fremont is one such parcel of real estate where PG&E has determined that its present and future public utility requirements are capable of being met through use of reserved easements without the necessity of continued retention of the fee interest in the property or its retention in rate base.

5. PG&E has agreed to sell its fee in the Boscell Road property to TYEE for \$781,200, seller retaining easements sufficient for its present and future utility requirements.

6. PG&E proposes to transfer, with interest, the net-of-tax proceeds of \$382,468 and booked into the RPS Memorandum Account and subsequently to the Transition Cost Balancing Account, once it is established, such that the proceeds and interest will be netted against the balance there.

7. PG&E proposes to reduce its base revenue requirement by \$32,589 in its next GRC, which will be filed in late 1997.

8. The application states PG&E's intention to have shareholders bear any costs associated with the expansion of easements that are not recoverable under applicable tariffs, and states that such costs shall include costs associated with any environmental concerns which arise.

9. By allocating all after-tax proceeds to the Transition Cost Balancing Account, the total amount of the electric industry restructuring transition costs will be recovered sooner, and the CTC charge will be eliminated more quickly, thereby reducing the overall CTC burden on ratepayers.

10. Retained easements will adequately protect PG&E's existing and future electric facilities requirements, and removal of fee ownership costs will result in lower costs to both PG&E and its ratepayers; accordingly, the proposed sale and transfer as well as the proposed ratemaking treatment of the after-tax gain on sale is in the public interest.

11. Because the public interest would best be served by having the sale and transfer take place expeditiously, the ensuing order should be made effective on the date of issuance.

Conclusions of Law

1. A public hearing is not necessary.
2. The proposed sale and transfer as set forth in the application, and the ratemaking treatment of the gain on sale after tax as set forth in the application should be approved.

O R D E R

IT IS ORDERED that:

1. Within six months after the effective date of this order, Pacific Gas and Electric Company (PG&E) may sell and transfer to TYEE Development Co., LLC, the property as set forth in Application 97-05-013, subject to the easements and reservations therein described.
2. Within 10 days of the actual transfer, PG&E shall notify the Director of the Commission's Energy Division and Office of Ratepayer Advocates in writing of the date on which the transfer was consummated. A true copy of the instrument effecting the sale and transfer shall be attached to the written notification.
3. Upon completion of the sale and transfer authorized by this Commission order, PG&E shall stand relieved of public utility responsibilities for the property except as to the reserved easements.
4. The ratemaking treatment, as set forth in the application, shall be followed by PG&E, except for the change in account names noted in this decision.
5. Completion of the sale and transfer authorized by this order shall obligate PG&E's shareholders to bear any costs associated with the expansion of easements that are not recoverable under applicable tariffs, including costs associated with any environmental concerns which arise.

6. Application 97-05-013 is closed.

This order is effective today.

Dated December 3, 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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1. A public hearing is not necessary.
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O R D E R

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2. Within 10 days of the actual transfer, PG&E shall notify the Director of the Commission's Energy Division and Office of Ratepayer Advocates in writing of the date on which the transfer was consummated. A true copy of the instrument effecting the sale and transfer shall be attached to the written notification.
3. Upon completion of the sale and transfer authorized by this Commission order, PG&E shall stand relieved of public utility responsibilities for the property except as to the reserved easements.
4. The ratemaking treatment, as set forth in the application, shall be followed by PG&E, except for the change in account names noted in this decision.
5. Completion of the sale and transfer authorized by this order shall obligate PG&E's shareholders to bear any costs associated with the expansion of easements that are not recoverable under applicable tariffs, including costs associated with any environmental concerns which arise.

6. Application 97-05-013 is closed.

This order is effective today.

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