

Decision 97-12-033 December 3, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC COMPANY, a California corporation, and BAILEY FARMS COMPANY, a California general partnership, 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. (Electric) (U 39 E)

ORIGINAL

Application 97-08-006
(Filed August 1, 1997)

OPINION

Summary

We approve the sale by Pacific Gas and Electric Company (PG&E) of an approximately 3.4-acre portion of Alameda County Assessor's Parcel Number 525-1250-17-17 to Bailey Farms Company (Bailey) and the ratemaking treatment requested by applicant for this transfer, subject to certain conditions.

Background

In this application, PG&E and Bailey, a California corporation, jointly seek Commission authority pursuant to Public Utilities (PU) Code § 851 for PG&E to sell and convey a certain parcel of land in Alameda County to Bailey. PG&E proposes to convey the property by standard-form Grant Deed.

The property consists of 3.4 acres of unimproved land in the City of Fremont, designated as Alameda County Assessor's Parcel Number 525-1250-17-17. PG&E acquired the property from Title Insurance and Trust Company by deed dated March 25, 1965, in connection with the construction of two electric tower lines which cross the property.

PG&E's ongoing efforts to sell properties that are no longer needed identified this property as a candidate. Aside from the two electric transmission lines and one gas transmission line which cross the property, PG&E does not otherwise make use of it,

and has no future plans for it, aside from maintaining its existing facilities that cross the property.

PG&E determined that it did not need to maintain fee interest in the property and could declare it surplus if it could enter into an agreement to sell the property and retain public utility easements with all rights necessary for maintenance and operation of the existing electric and gas lines.

PG&E believes that by conveying the fee interest in the property and retaining necessary easements, it could reduce the cost of service to customers by removing the book value of the fee interests from rate base.

The original cost of the property was \$53,633. The most recent appraisal dated June 28, 1996 estimated the market value at \$400,000. After PG&E listed the property with a real estate broker, Bailey contacted the broker and offered to purchase the property for \$133,779, and the purchase and sale agreement between PG&E and Bailey was adopted by the parties contingent on Commission approval. This property is desirable for Bailey since it owns the parcels on both sides, and wishes to incorporate it into its existing and planned developments. The property is less desirable to other potential buyers because of the large area encumbered by easement reservations for the electric and gas lines. In addition, access to the property from the Automall Parkway is limited by two existing electric transmission towers.

PG&E believes that this proposed sale is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) because it can be seen with certainty that there is no possibility that the proposed sale may have a significant effect on the environment, and it involves no change in use beyond previously existing uses. If the buyer proposes to change the use of the property in the future, PG&E believes that the Commission should defer to the state and local authorities having jurisdiction over buyer's proposed changes in use, to conduct any environmental review as deemed necessary. PG&E believes it to be premature and inappropriate for the Commission to conduct CEQA review at this time. In lieu of conducting CEQA review at this time, the Commission may wish to condition its

approval of the proposed sale on buyer's compliance with applicable state and local environmental regulations.

PG&E has disclosed to buyer that at some time during its ownership of the property, it may have handled, treated, stored, or disposed of hazardous substances on or adjacent to the property. Pursuant to the agreement, buyer acknowledges that PG&E will not be responsible to buyer for the presence of hazardous materials either on or affecting the property. Consequently, the parties do not expect any claim for environmental damage that may affect PG&E or its ratepayers after the close of escrow.

PG&E proposes to remove the \$53,633 property cost from rate base after the sale, and book the net-of-tax proceeds to a new memorandum account, until what PG&E calls the Competition Transition Charge (CTC) account is established. Then the balance, including interest, would be transferred to the CTC Revenue Account. The result is in the public interest because the sale will reduce the transition cost responsibility of ratepayers, while PG&E retains beneficial use of the property through easements.

Since Commission authority is necessary for the sale of property that is used and necessary, PG&E and Bailey jointly seek Commission approval of the agreement. PG&E requests ex parte treatment of this application, believing that hearings are not necessary if it furnished adequate information to determine that the sale of the property to buyer is in the public interest.

Response of Office of Ratepayer Advocates

ORA's response basically supports the proposed sale to Bailey, with some added protections to insure that ratepayers are not at risk from any future problems with the property.

ORA supports PG&E's intent to have its shareholders deal with CEQA and associated environmental concerns. ORA believes that PG&E's assertion that there is no possibility that the proposed sale may have a significant effect on the environment because the sale does not involve new uses, is speculative, since the buyer intends to construct a light industrial building on the property as well as a parking area within the easement area. The light industrial building may have an environmental impact.

However, ORA concurs that it would be premature for the Commission to conduct a CEQA review at this time since buyer's intent may change in time. However, the Commission should require PG&E to secure from buyer an executed release and indemnity agreement prior to close of escrow to protect PG&E and its ratepayers against future environmental claims.

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. (PU Code § 851.) The property is presently used for gas and electric transmission lines and their maintenance. Therefore, the property is useful, and PU Code § 851 applies.

This application was noticed in the Commission's Daily Calendar on August 6, 1997. ORA filed a response, generally supporting the request. No protests were filed. A public hearing is not necessary.

We agree in general with the proposed ratemaking treatment: removing the property from rate base and booking the net-of-tax proceeds to a memorandum account until the transition cost account is established. In this way all of PG&E's ratepayers will receive the benefit of the gain on sale by the resulting credit to the transition cost balancing account. By crediting all net-of-tax proceeds to the transition cost balancing account, transition costs will be recovered sooner, and the CTC will be eliminated more quickly, thus reducing the overall burden on PG&E's ratepayers. The sale of underutilized fee interests in property also helps to position PG&E for the restructured electric industry. The memorandum account funds should accrue interest at the rate for prime, three-month commercial paper, as reported in the Federal Reserve Statistical Release G.13, and we will so order. This rate has been used for large utilities' Energy Cost Adjustment Clause accounts.

Regarding CEQA, we believe that ORA is correct in its assessment; it is premature to conclude that there is no possibility that the proposed sale may have a significant effect on the environment. The sale might involve new uses, and could

ultimately involve uses not now contemplated by buyer. We agree with ORA and applicants that it would be premature for the Commission to conduct a CEQA review due to the uncertainties associated with the future uses of the property. At such time as definite plans are proposed, local jurisdictions can properly handle the CEQA review.

According to the agreement, PG&E and its ratepayers are not at risk for cleanup of hazardous materials, and buyer acknowledges that PG&E will not be responsible for cleanup of any hazardous substances that may be encountered. ORA further recommends that we require PG&E to secure from Bailey an executed release and indemnity agreement prior to close of escrow to protect PG&E and its ratepayers against future environmental claims. Since this is consistent with the intent of the proposed sale agreement, it should not cause concern from the parties, and may offer further protection to PG&E and its ratepayers. We will require it.

Subject to the conditions mentioned above, we will approve the agreement in the order that follows.

Findings of Fact

1. PG&E is an electric utility subject to the jurisdiction of the Commission.
2. Applicants have entered into an agreement for PG&E to sell and Bailey to buy a parcel of land in Alameda County.
3. The property is currently used by PG&E for operation and maintenance of the gas and electric lines that cross it.
4. PG&E has no plans for additional future uses of the property.
5. Under the agreement PG&E will retain utility easements and rights for maintenance and operations of the existing gas and electric lines.
6. It is premature to conduct a CEQA review at this time due to uncertain potential uses of the property in the future.
7. PG&E and its ratepayers could be exposed to risks associated with cleanup of hazardous materials on the property unless measures are taken to protect them.
8. Interest may be accrued on balancing account balances.

Conclusions of Law

1. Transfer of the property is subject to PU Code § 851.
2. No CEQA review is appropriate at this time.
3. PG&E should be required to secure an executed release and indemnity agreement from Bailey to protect against future environmental claims.
4. The agreement should be approved.
5. Following transfer of the property, PG&E should remove from rate base the net book value of the property, \$53,633, and book the net-of-tax proceeds from the sale to a new memorandum account. This amount should accrue interest at the rate for prime three-month commercial paper. Following establishment of the Transition Cost Balancing Account, applicant should credit the balance in the new memorandum account to the Transition Cost Balancing Account.

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 Bailey Farms Company (Bailey), the Alameda County property as set forth in Application (A.) 97-08-006, subject to the easements and reservations described therein.
2. Prior to close of escrow of the sale and transfer, PG&E shall secure from Bailey an executed release and indemnity agreement protecting PG&E and its ratepayers from future environmental claims.
3. Within 10 days of the actual transfer, PG&E shall notify the Director of the Commission's Energy Division in writing of the date of transfer consummation.
4. 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 with respect to the reserved easements.
5. The ratemaking treatment shall be as set forth in A.97-08-006; PG&E shall remove the \$53,633 property cost, or the then-depreciated property cost, from rate base after the sale, and book the net-of-tax proceeds to a new memorandum account to be

A.97-08-006 ALJ/BRS/jac

approved by an Advice Letter filed with the Energy Division of the Commission. The account shall accrue interest at the rate for prime, three-month commercial paper, as reported in the Federal Reserve Statistical Release G.13; and following establishment of the Transition Cost Balancing Account, PG&E shall seek authority to transfer and credit the entire balance in the memorandum account, including interest accrued, to the Transition Cost Balancing Account.

6. A.97-08-006 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