

FEB 4 1998

Decision 98-02-031 February 4, 1998

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

Application of Pacific Gas and Electric Company, a California corporation, and Westel-Oviatt Lumber Company, a California corporation, for an Order Authorizing the Former to Sell and Convey to the Latter a Certain Parcel of Land in Placer County Pursuant to Public Utilities Code Section 851 (Electric) (U 39 E)

**ORIGINAL**

Application 97-06-044  
(Filed June 30, 1997)

**O P I N I O N**

**Summary**

We will approve the sale by Pacific Gas and Electric Company (applicant) of approximately 115 acres of unimproved land located in Placer County and designated as Placer County Assessor's Parcel Number 63-01-004 (the Property) to Westel-Oviatt Lumber Company, a California corporation (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 June 30, 1997, applicant filed an application for authority to transfer the Property to Buyer, which intends to manage the Property for timber production. Notice of the application was published in the Daily Calendar on July 3, 1997. No protests were filed. The Office of Ratepayer Advocates (ORA) filed a response on August 6, 1997, and recommended that the transfer be approved, subject to an express condition that applicant's shareholders would bear any costs associated with expansion of easements that are not recoverable under applicable tariffs.

**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 watershed protection, timber management, and right-of-way for two overhead electric transmission lines. Therefore, the Property is useful, and PU Code Section 851 applies.

Buyer offered to purchase the Property as a result of a written invitation to bid that was sent to approximately 150 prospective purchasers and resulted in four offers, of which Buyer's was best. Applicant determined that it could retain easements sufficient for its existing and projected needs for the existing electric transmission lines and other utility uses 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 \$260,000, subject to the approval of this Commission. The Purchase Agreement reserves to applicant easements for its existing electric facilities. The Purchase Agreement also contains an acknowledgment and agreement by Buyer that the Property is included in Project No. 2310 of the Federal Energy Regulatory Commission and is subject to the restriction that the use of the Property not endanger health, create a nuisance, or otherwise be incompatible with recreational uses of the existing hydroelectric project.

Applicant may have handled, treated, stored, or disposed of hazardous substances on or adjacent to the Property. The Purchase Agreement provides that Buyer releases applicant from claims based on any contamination that may be discovered in the future whether it resulted from a release before or after the closing of the sale of the Property. However, Buyer does not indemnify applicant against claims arising from contamination of the property that may occur following the transfer of the Property.

The total original cost of the Property was \$825, of which applicant recorded 25% as Plant-in-Service, and 75% as Non-Utility Property. Applicant represents that the 1997 revenue requirement associated with the Property is \$1,300 including taxes, franchise fees, and an allowance for uncollectibles. This is based on annual operation and maintenance costs of approximately \$1,200 for timber management, property taxes of \$59, and applicant's authorized cost of capital (11.60% on equity, and 9.45% on rate base). In its most recent General Rate Case Decision (D.) 95-12-055, that revenue requirement was included as part of applicant's aggregate revenue requirement.

Applicant proposes to remove from rate base the Plant-in-Service portion of the Property, book the net-of-tax proceeds (after expenses of sale estimated at \$5,200) of \$37,623 to a memorandum account named the Real Property Sales Memorandum Account, which was approved in D.97-05-028. This amount would accrue interest at the three-month commercial paper rate. Following establishment of what applicant calls a Competition Transition Charge (CTC) Revenue Account proposed in Application (A.) 96-08-070, 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. Consistent with D.96-09-044 and D.96-06-009, we approved a Transition Cost Balancing Account in D.97-06-060 and D.97-11-074, which will result in the application of sales proceeds to reduce transition costs.

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 Section 21080.)

As we have previously noted, a change of ownership does not cause any direct physical change in the environment unless construction is required as a condition of sale, as may be needed, for example, to separate facilities. (See *In re Pacific Gas & Electric Company*, D.97-07-019, *mimeo.* at 4 (*Photovoltaics*)). Nonetheless, a change of ownership may give rise to foreseeable *indirect* physical changes to the environment, bringing the activity within the definition of a project for CEQA purposes. It might be argued that because the Property has been used as watershed and managed for timber production, and neither applicant nor Buyer seeks authority from the Commission for a change in the existing use of the Property, there is no substantial evidence of any indirect change to the environment, and no CEQA review is required.

In *Photovoltaics*, applicant proposed to transfer a research electrical generation project to a state agency, whose plans it were to continue its operation on the same basis. Because the transferee was a state agency, it would necessarily have to conduct its own CEQA analysis of any future change in operations. In addition, the state agency had already been participating in the operation of the facility. The facts here are

different: the Buyer is not a state agency, has not been managing the Property for timber production, and it is foreseeable that the Buyer would seek to increase the scale of timber production in the future. The increased production might, or might not, give rise to *significant* physical changes in the environment, but it is inescapable that unless the Buyer were to disclaim any intention of increasing timber production beyond current levels, the transfer of the Property represents a potential indirect physical change to the environment. Presumably, Buyer would not be willing to have the transfer conditioned upon a restriction in the level of timber production on the property to current levels, which could avoid the conclusion that the transfer of the Property constitutes a project.

However, under Section 21080.5 of CEQA, the Secretary of the California Resources Agency has certified that the regulation of the timber industry is exempt from the requirement for preparation of an environmental impact report under CEQA, because under the Z'berg-Nejedly Forest Practices Act (PR Code §§ 4511 *et seq.*), a license from the State Water Resources Control Board and approval by the California Department of Forestry of a timber harvesting plan is required for the removal of timber, which provides the equivalent information. (*See generally Environmental Protection Center v. Johnson* (1985) 170 Cal.App.3d 604, 610.) In addition, if Buyer were to seek to change the use of the Property, which applicant states is now zoned for timber production, local authorities would be required to conduct a CEQA review.

#### 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 watershed protection, timber management, and right-of-way for two overhead electric transmission lines.
4. The Purchase Agreement reserves sufficient rights in the Property to permit applicant to use the Property for its present and future utility purposes without the necessity for owning the Property in fee simple.
5. The property is zoned for timber production, which is subject to the requirements of the Z'berg-Nejedly Forest Practices Act.

6. The Purchase Agreement contains no indemnification from Buyer to applicant for environmental liabilities arising from the post-transfer discharge of hazardous substances.

7. Applicant has assumed the risk, on behalf of its shareholders, that the easements reserved from the Property are sufficient for all present and future utility uses, and will bear any cost due to the expansion of such easements which is not funded by new customers pursuant to tariffs.

#### Conclusions of Law

1. Transfer of the Property is subject to PU Code Section 851.

2. If transfer of the Property constitutes a project for CEQA purposes, it is exempt from the requirement for preparation of an environmental impact report under PR Code Section 21080.5.

3. Because applicant has not obtained indemnification from Buyer against third-party claims for environmental liabilities arising from post-transfer discharges of hazardous substances on the Property, applicant's shareholders should assume the risk of any such third-party claims.

4. Transfer of the Property should be approved.

5. Following transfer of the Property, applicant should remove from rate base the Plant-in-Service portion of the original cost of the Property, book the net-of-tax proceeds (\$37,623) to the memorandum account named the Real Property Sales Memorandum Account, which was approved in D.97-05-028. This amount would accrue interest at the three-month commercial paper rate. Following establishment of the Transition Cost Balancing Account approved in D.96-06-060 and D.97-11-040, applicant should credit the balance in the Real Property Sales Memorandum Account to the Transition Cost Balancing Account.