

ALJ/RC1/tcg *

Decision 98-02-032 February 4, 1998

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ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Application 97-10-033
(Filed October 14, 1997)

O P I N I O N

Summary

We will approve the sale by Pacific Gas and Electric Company (applicant) of approximately 320 acres of unimproved property located in Shasta County and designated as Shasta County Assessor's Parcel number 22-13-11 (the Property) to Sierra Pacific Holding 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 October 14, 1997, applicant filed an application for authority to transfer the Property to Buyer. Notice of the application was published in the Daily Calendar on October 20, 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 Property is presently used for watershed to protect downstream hydroelectric facilities from excessive siltation that

might result from unregulated logging of the Property. Therefore, the Property is useful, and PU Code Section 851 applies.

Buyer offered to purchase the Property pursuant to a written invitation to bid that was mailed to approximately 200 potential buyers. Three offers were received, of which buyer's was the best offer. Applicant determined that it could retain riparian and appropriative water rights sufficient for its existing and projected hydroelectric power 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 \$900,000, subject to the approval of this Commission. The Purchase Agreement reserves to applicant sufficient riparian and appropriative water rights.

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. Moreover, Buyer agrees to 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 \$37, none of which is in rate base. Therefore, applicant proposes to record the net-of-tax proceeds as a gain to its shareholders.

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. Applicant argues that because the Property has been used as watershed and managed for timber production, and neither it 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 that the transfer of the Property represents a potential indirect physical change to the environment. Buyer's plans, however, are contingent upon many factors, according to applicant. 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.