

APR 9 1998

Decision 98-04-009 April 9, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company, a California corporation, and Peter G. Pfendler, for an Order Authorizing the Former to Sell and Convey to the Latter a Certain Parcel of Land in Tehama County Pursuant to Public Utilities Code Section 851. (Electric) (U 39 B)

ORIGINAL

Application 97-10-063
(Filed October 28, 1997)

O P I N I O N

Summary

We will approve the sale by Pacific Gas and Electric Company (applicant) of approximately 2,334 acres of unimproved land located in Tehama County and designated as Tehama County Assessor's Parcel Numbers 051-150-07, -08, -09 & -10, 051-160-01, -02, -07 & 08, 051-150-08, -9 & -12, 051-190-03, -04, -06, -11 & -12, 051-210-10, -11 & -12, 051-220-02, -03, -05, -6, -07, -13 & -15 (the Property) to Peter G. Pfendler (Buyer). We also approve 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 28, 1997, applicant filed an application for authority to transfer the Property to Buyer, who plans to hold the Property for conservation purposes. Notice of the application was published in the Daily Calendar on October 13, 1997. No protests were filed. The Office of Ratepayer Advocates (ORA) filed a response on October 25, 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, cattle grazing, and two 500-kilovolt electric transmission lines. Therefore, the Property is useful, and PU Code Section 851 applies.

Buyer offered to purchase the Property pursuant to bid packages that applicant provided to environmental groups, the United States Bureau of Land Management, all adjacent land owners and others who had indicated an interest in the Property. Two offers were received, of which Buyer's was the better. Applicant determined that it could retain easements sufficient for its existing and projected needs for electric transmission lines 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 \$352,000, subject to the approval of this Commission. The Purchase Agreement reserves to applicant easements for its existing electric facilities.

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.

Applicant caused an appraisal to be made of the fair market value of the Property, which was found to be \$310,000. The total original cost of the Property was \$20,992.

Applicant represents that the Property is not included in its rate base: all of the Property is accounted for as non-utility property, and there is, accordingly, no revenue requirement associated with the Property.

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 § 21080.) Applicant represents that the Property is currently zoned as "NR" (Natural Resources Land) and that it is not accessible by road. Therefore, it is not foreseeable that the Property would be developed as a consequence of the transfer, and, accordingly, the transfer is not a "project" for CEQA purposes.

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, cattle grazing, and two electric transmission lines.
4. The Purchase Agreement reserves sufficient rights in the Property to permit applicant to maintain its electric transmission lines without the necessity for owning the Property in fee simple.
5. It is not foreseeable that the Property would be used in such a way to create a physical change in the environment following transfer.
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. Transfer of the Property does not constitute a project for CEQA purposes.
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 be permitted to record the net-of-tax proceeds as a gain to its shareholders.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (applicant) may transfer to Peter G. Pfendler the real property (Property) described in the application, subject to the terms and conditions described therein.
2. Following transfer of the Property, applicant may record the net-of-tax proceeds as a gain to its shareholders.
3. Applicant's shareholders shall bear the cost of any future expansion of easements on the Property, to the extent that such costs are not paid by customers from applicable tariffs.
4. Applicant's shareholders shall bear the cost of any third-party claims for environmental liabilities arising from the post-transfer discharge of hazardous materials on the Property.
5. The authority granted hereby expires if not exercised within one year of the date of this order.
6. Applicant shall provide notice to Formal Files of the Commission and the Office of Ratepayer Advocates of the recordation of the instrument of transfer of the Property, within ten days of the date of recordation, and shall provide a conformed copy of the instrument effecting such transfer.

7. Application 97-10-063 is closed.

This order is effective today.

Dated April 9, 1998, at San Francisco, California.

RICHARD A. BILAS
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners