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Decision 98-04-050 April 23, 1998

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC COMPANY, a California corporation, and SCOTT D. STEPHENS and ELLEN J. STEPHENS for an Order Authorizing the Former to Sell and Convey to the Latter Certain Parcels of Land in Tehama County Pursuant to Public Utilities Code Section 851. (Electric) (U 39 B)

Application 97-08-020
(Filed August 13, 1997)

O P I N I O N

Pacific Gas and Electric Company (PG&E or Seller) and Scott D. Stephens and Ellen J. Stephens (Buyers) jointly apply for authority to transfer certain parcels of land located in Tehama County (the Property) pursuant to a Standard Purchase and Sale Agreement dated August 27, 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 August 20, 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.

Buyers are individuals. They are purchasing the Property for family recreation purposes.

The Property

The Property consists of approximately 1,122 acres of unimproved land located in Tehama County and is designated as Tehama County Assessor's Parcel Numbers 081-020-05, 081-070-03, 081-070-06, and 081-070-12. PG&E acquired the Property from predecessor companies, Oro Electric Corporation and Oro Water, Light and Power Company, by General Transfer dated March 17, 1917 (recorded in Book 88 of Deeds at Page 439, Tehama County Records).

Since its acquisition, the Property has been used by PG&E for watershed purposes. In addition, the parcel identified as Tehama County Assessor's Parcel Number 081-070-06 is traversed by two 500-kV electric transmission lines. A vicinity map and a detailed map of the Property showing the location of the electric transmission lines are attached to the Application.

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 the two electric transmission lines which traverse the Property, PG&E does not otherwise make use of the Property. With adequate easements 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 customer service at a reduced cost.

Subsequently, PG&E entered into an agreement with Buyers to convey the fee interest in the Property subject to an easement for the electric transmission lines. Pursuant to Public Utilities Code Section 851, Commission authority for the sale is necessary for property that is "used and necessary" (a term assumed to be synonymous with "used and useful"). Hence, PG&E and Buyers are jointly filing this Application.

Easements

Pursuant to the Agreement, PG&E will be reserving an easement to protect both of the existing electric lines. The easement to be reserved is approximately 5,400 feet in length and 350 feet wide.

The rights being reserved are set forth in the Grant Deed whereby PG&E proposes to sell the Property to Buyers. However, in addition to the rights specifically reserved in the Grant Deed, PG&E relies on the common law of servitudes to the maximum extent possible. Under the common law of servitudes, PG&E has the right to do such things as are necessary for the full enjoyment of easements themselves, and such rights do not need to be expressly stated in the document which creates the easements.

Thus, the easement herein 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 includes rights for overhead pole and tower 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 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 such other common law rights as the right to use access roads over the Property, or the right to install gates, or the right to mark the easement area, or any other action or thing that PG&E finds is 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 Buyers or their 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, 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

A. Compliance with the California Environmental Quality Act (CEQA)

PG&E believes that the proposed sale is categorically exempt from the requirements of CEQA because (1) it can be seen with certainty that there is no possibility that the proposed sale may have a significant effect on the environment; and (2) it involves no change in use beyond previously existing uses. 14 Cal. Code of Regulations §§ 15061 (b)(3) & 15301 (b).

In this application, PG&E seeks authority under Public Utilities Code Section 851 to transfer approximately 1,122 acres of unimproved land in Tehama County to Buyers. As the Commission has previously acknowledged, the sale itself is a "purely legal happening" which will not cause any direct physical change to the environment. Pacific Gas and Electric Company, Decision (D.)97-07-019 (1997), mimeo. at 4. The proposed sale, therefore, will not have a significant effect on the environment, and, consequently, no further evaluation by the Commission is required. Myers v. Board of Supervisors of Santa Clara County, 58 Cal. App. 3d 413, 421-22 (1976), citing No Oil Inc. v. City of Los Angeles, 13 Cal. 3d 68, 74 (1974); see also Southern California Edison Co., D.94-06-017, 55 CPUC2d 126, 129 (1994).

In addition, the proposed sale will not cause any indirect changes to the environment. As noted above, the Property has been used by PG&E for watershed purposes. In addition, a portion of the Property is traversed by two 500-kV electric transmission lines. Neither PG&E nor Buyer seeks authority from the Commission to change the existing uses of the Property. Accordingly, there

is no substantial evidence of any indirect change to the environment as a result of the proposed sale, and, therefore, CEQA review is not required. PG&E, supra, mimeo. at 5.

Moreover, to the extent that Buyers may someday propose a change in use of the Property, PG&E believes it would be both premature and inappropriate for the Commission to conduct CEQA review at this time. CEQA guidelines expressly recognize that the timing of CEQA review "involves a balancing of competing factors," and that such review should occur "as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment." 14 Cal. Code of Regulations § 15004.

As noted above, Buyers plan to use the Property for family recreation purposes, but Buyers' plans are contingent upon numerous factors, including approval from the Commission for the sale of the Property. In light of these contingencies, PG&E urges the Commission to defer to the appropriate state and local authorities having jurisdiction over Buyers' proposed changes in use of the Property. These authorities are generally in a superior position to evaluate local environmental impacts and develop appropriate mitigation strategies.

Such deference is appropriate under the circumstances here and will not result in any regulatory gap. CEQA specifically applies to discretionary projects such as issuance of conditional use permits and approval of tentative subdivision maps. See Pub. Res. Code § 21080; see also Myers, supra, 58 Cal. App. 3d at 424. Accordingly, if and when Buyers propose any change in use of the Property, the appropriate state and local authorities having authority over such proposed uses must conduct environmental review under CEQA.

Furthermore, in lieu of conducting CEQA review at this time, the Commission may condition its approval of the proposed sale on Buyers'

compliance with applicable state and local environmental regulations. Such conditional approval is commonly imposed and is consistent with Commission precedent under CEQA. See Sundstrom v. County of Mendocino, 202 Cal. App. 3d 296, 308 (1988), citing Perley v. Board of Supervisors, 137 Cal. App. 3d 424, 429 (1982); see also In Re: SpectraNet SGV, D 97-06-020, 1997 Cal. PUC LEXIS 367 at *37 (1997).

B. Environmental Claims

As part of the Purchase and Sale 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, Buyers acknowledge 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 Buyers for the presence of hazardous materials either on or affecting the Property.

Buyers have 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 they waive and relinquish any and all rights they 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 Purchase and Sale Agreement by and between PG&E and Buyers. Under the

terms of the Agreement, PG&E will sell and convey to Buyers the Property, together with all easements, rights and privileges appurtenant thereto, and all warranties and other agreements related thereto. The purchase price of the Property is \$171,666 less broker's fees of \$3,433.00. It was acquired in 1917 at the cost of \$7,854.

The most recent appraisal of the Property indicates an estimated market value of \$150,000. The purchase price is above the estimated market value. According to the Agreement, the closing period for this transaction 30 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 \$1,979, and PG&E's 1997 authorized cost of capital (11.60% equity; 9.45% rate base), the 1997 revenue requirement, including taxes, franchise fees and an allowance for uncollectibles, is \$3,116. 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 imbedded in PG&E's adopted rate base and Operations and Maintenance expense estimates. Therefore, in this case, the Property's \$3,116 revenue requirement is included in the GRC revenues authorized by D.95-12-055 (PG&E's 1996 Test Year decision).

PG&E is reserving easements for any existing or proposed facilities. These easements, 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, selling the Property with the appropriate easements allows PG&E

to avoid maintenance costs on fee ownership property that was being underutilized for utility purposes.

The Property currently is in PG&E's rate base. PG&E proposes that the \$7,854 cost of the Property be removed from rate base. In addition, PG&E proposes to book the net-of-tax proceeds to 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. Then, following establishment of what PG&E calls a Competition Transition Charge (CTC) Revenue Account proposed in Application (A.) 96-08-070, PG&E would transfer the entire balance, including interest, in the Real Property Sales Memorandum Account to the CTC Revenue Account. In summary, PG&E proposes to:

- Retire the asset from rate base.
- Book the net-of-tax proceeds to a new balancing account.
- Accrue interest on the balancing account at the commercial paper rate.
- Transfer the monies in the balancing account to the CTC Revenue Account once it is established.

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

Debit - Cash	\$168,233
Credit - Land	\$ 7,854
Credit - Balancing Account	\$ 95,031
Credit - Tax Liability	\$ 65,347

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 CTC Revenue Account, it also provides incentive to PG&E to maximize the potential gain on the sale of the land.

In D.97-06-060 and D.97-11-074 in A.96-08-070, the Commission established a Transition Cost Balancing Account, rather than PG&E's CTC Revenue Account, to record credits and debits related to transition costs as specified in the Public Utilities Code. We will authorize PG&E's proposed ratemaking treatment, except that the balance in the Real Property Sales Memorandum Account should be credited to the Transition Cost Balancing Account.

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, as a condition of approving the sale and transfer of the Property, a) PG&E's intention to have shareholders bear any costs associated with the expansion of easements that are not recoverable under applicable tariffs, and b) that PG&E shareholders should bear the costs of any environmental concerns which may arise.

"2. The Commission should adopt PG&E's preference of the handling of the CEQA issue for this property at this time.

"3. The Commission should adopt PG&E's proposal to transfer, with interest, the net-of-tax proceeds of \$95,031 into the RPS Memorandum Account and subsequently to the CTC Revenue Account, such that the proceeds and interest will be netted against the balance there.

"4. The Commission should adopt PG&E's proposal to reduce its rate base by \$7,854 in its next general rate case, which will be filed later in 1997.

"5. 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 1,122 acres located in Tehama County 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 Tehama County property to Buyers for \$171,666; 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 \$95,031 into the Real Property Sales 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 \$3,116 in its GRC, A.97-12-020.

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 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 are 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.

12. Approval of this application should be conditioned on Buyers' compliance with applicable state and local environmental regulations.

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 this decision 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 Scott D. Stephens and Ellen J. Stephens (Buyers) the property as set forth in Application 97-08-020, 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 this decision, 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. This order is conditioned upon Buyers' compliance with applicable state and local environmental regulations.

A.97-08-020 ALJ/WRI/mrj *

7. Application 97-08-020 is closed.

This order is effective today.

Dated April 23, 1998, at Sacramento, California.

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