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Decision 98-05-012 May 7, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company, a California corporation, and Village Builders, L.P., for an Order Authorizing the Former to Sell and Convey to the Latter a Two Parcels of Vacant Land in Marin County Pursuant to Public Utilities Code Section 851 (Electric) (U 39 E)

ORIGINAL

Application 97-10-003  
(Filed October 1, 1997)

O P I N I O N

Summary

We will approve the sale by Pacific Gas and Electric Company (applicant) of two parcels of vacant land (totalling approximately 11 acres) located in the City of San Rafael, Marin County and ancillary personal property described in the application (the Property) to Village Builders, L.P., Fair Isaac and Company, Inc. (either, Buyer), Lindaro Office Park, Inc. or North America Lease Plan, Inc. (any of which, Transferee), 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 1, 1997, applicant filed an application for authority to transfer the Property to Transferee, which plans to develop the Property as an office park. Notice of the application was published in the Daily Calendar on October 6, 1997. No protests were filed. The Office of Ratepayer Advocates (ORA) filed a response on November 3, 1997 and recommended that the transfer be approved, subject to certain conditions. On March 9, 1998 and March 13, 1998, applicant moved to amend its application, so that it would be able to transfer the property either to Village Builders, L.P or to an optionee, Fair Isaac and Company, Inc. or to the optionee's designee, Lindaro Office Park, Inc., or to Lease Plan North America, Inc., an Illinois corporation, an alternate optionee's designee. The assigned administrative law judge (ALJ) issued a ruling on March 16, 1998, permitting the application to be amended and, pursuant to Rule 2.6(a)(2) of the

Rule of Practice and Procedure, prohibiting responses to the amendment, because the identity of the Transferee was a minor change.

**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 a gas meter and regulator lot, groundwater remediation, and transmission and distribution of electricity. Therefore, the Property is useful, and PU Code Section 851 applies.

Village Builders, L.P. offered to purchase the Property pursuant to a bid solicited by applicant by advertising and with the assistance of a real estate broker. Approximately 190 prospective purchasers received bidding information. Nine offers were received, which applicant narrowed to two based on the proposed use for the Property, the financial capacity of the purchasing entity, the experience of the purchasing entity, the offered price, the closing schedule, the organization and management of the entity, and an interview. Applicant selected the bid of Village Builders, L.P., which was the highest and considered by applicant to be the best. Applicant determined that it could retain easements sufficient for its existing and projected needs for gas and electric uses if it transferred ownership of the Property to Transferee. Applicant and Village Builders, L.P. entered into an agreement (Purchase Agreement) for sale of the Property to Buyer for \$3.9 million, subject to the approval of this Commission. The Purchase Agreement provides that Village Builders, L.P. could transfer its rights to Fair Isaac and Company, Inc. or a designee of that transferee. The Purchase Agreement reserves to applicant easements for its existing gas and electric facilities and road access. It also provides for a license to allow applicant to continue activities required for continuing environmental monitoring and remediation.

The purchase price may be increased after the closing of the sale if the Property is developed to certain retail uses during the ten-year period following the conveyance of the Property (Price Contingency).

Applicant may have handled, treated, stored or disposed of hazardous substances on or adjacent to the Property, which was used for 85 years as a gas manufacturing plant, until 1960. From 1962 until 1986, the Property was used for applicant's service center, and a substation and administrative staff offices were built on adjoining parcels. In 1990, the buildings on the Property were removed. The Purchase Agreement provides for an Amended and Restated Environmental Agreement (Environmental Agreement) that provides for applicant to retain its responsibility for investigating, remediating, and/or containing substances currently on the Property and any future release or migration of such substances. Moreover, the Environmental Agreement provides that Buyer will indemnify applicant against claims arising from contamination of the Property by Transferee that may occur following the transfer of the Property, and Buyer will assume (subject to indexing) 25% per year of applicant's costs of operating the groundwater remediation system to a maximum average (subject to indexing) of \$20,000 per year. Applicant's cost historically has ranged between \$90,000 and \$108,000, exclusive of major repair or replacement.

The total original cost of the Property was \$90,962, which is currently in applicant's rate base. Applicant represents that the 1997 revenue requirement associated with the Property is \$103,181, allocated as a part of base rates as determined in its general rate case (GRC). In its most recent GRC 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 non-depreciable portion of the net book value of the Property, \$90,962, representing the land. Applicant would remove \$103,181 from its revenue requirement. Applicant further proposes to book (after expenses of sale estimated at \$208,000) the net-of-tax proceeds (\$2,133,759) 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 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 charges. Consistent with D.96-09-044 and D.97-11-074, we approved a Transition Cost Balancing Account in D.97-06-040 and D.97-11-074, which will result in the application of sales proceeds to reduce transition costs.

ORA recommends that the applicant be required to flow through the Price Contingency to ratepayers in the event that any such amount is received in connection with post-closing changes to the use of the Property, as provided in the Purchase Agreement. This may be done through the Transition Cost Balancing Account, if it is still in operation at the time of any payment under the Price Contingency. Otherwise, applicant must apply to the Commission to establish some replacement ratemaking mechanism.

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.)

On February 18, 1998, the City of San Rafael published a notice to determination (State Clearinghouse Number 97042041) that, as lead agency, it had approved a project for the development of a 406,000 square foot office park complex on the Property, prepared an environmental impact report (EIR), made mitigation measures a condition of approval, adopted a statement of overriding considerations, and certified the final EIR dated December 5, 1997, and the modifications thereto dated December 23, 1997, revised February 8, 1998 (FEIR).

The FEIR concluded that all but one of the adverse environmental effects of the project (defined as the proposal to develop the Property for an office park) could be avoided or reduced to less-than-significant levels through the adoption of mitigation measures that the City of San Rafael has required as a condition of its permit issuance. The adverse impact that could not be avoided or reduced to a less-significant level related to traffic conditions on U.S. Highway 101. Two segments (between North San Pedro and Lincoln Avenue and between Lincoln Avenue and Mission Avenue) in the southbound direction during the morning peak hour, and three segments (the same two segments plus a segment between Mission Avenue and Interstate 580) in the

northbound direction during the evening peak hour would experience a deterioration of volume-to-capacity ratio of 0.01 as a result of the project's incremental contribution. The FEIR determined that any deterioration of that ratio of 0.01 or greater to be significant.

Mitigation of the traffic impacts to less-than-significant levels could be accomplished through construction of High Occupancy Vehicle lanes between North San Pedro Road and Lucky Drive, at an estimated cost of \$82 million, of which \$43 million (for the southbound lanes) is funded, and \$39 million (for the northbound lanes) is unfunded.

The City of San Rafael considered that it is "not reasonably feasible to implement [construction of the High Occupancy Vehicle lanes in the northbound direction] prior to occupancy [of the Property] or to impose [upon the project for the development of the Property] the unfunded \$39 million cost of a measure for mitigation of regional impacts on U.S. 101." We concur, as the unfunded amount is ten times the fair market value of the Property.

#### **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 Transferee.
3. The Property is presently used for a gas meter and regulator lot, groundwater remediation, and transmission and distribution of electricity.
4. The Purchase Agreement reserves sufficient rights in the Property to permit applicant to continue to use the Property in the same manner as it currently uses the Property without the necessity for owning the Property in fee simple.
5. On February 18, 1998, the City of San Rafael published a notice of determination that, as lead agency, it had approved a project for the development of a 406,000 square foot office park complex on the Property, prepared an EIR, made mitigation measures a condition of approval, adopted a statement of overriding

considerations, and certified the final EIR dated December 5, 1997, and the modifications thereto dated December 23, 1997, revised February 8, 1998.

6. The FEIR concluded that all but one of the adverse environmental effects of the project (defined as the proposal to develop the Property for an office park) could be avoided or reduced to less-than-significant levels through the adoption of mitigation measures that the City of San Rafael has required as a condition of its permit issuance.

7. The adverse impact that could not be avoided or reduced to a less-significant level related to traffic conditions on U.S. Highway 101.

8. Two segments of U.S. Highway 101 (between North San Pedro and Lincoln Avenue and between Lincoln Avenue and Mission Avenue) in the southbound direction during the morning peak hour, and three segments (the same two segments plus a segment between Mission Avenue and Interstate 580) in the northbound direction during the evening peak hour would experience a deterioration of volume-to-capacity ratio of 0.01 as a result of the project's incremental contribution.

9. The FEIR determined that any deterioration of that ratio of 0.01 or greater to be significant.

10. Mitigation of the traffic impacts to less-than-significant levels could be accomplished through construction of High Occupancy Vehicle lanes between North San Pedro Road and Lucky Drive, at an estimated cost of \$82 million, of which \$43 million (for the southbound lanes) is funded, and \$39 million (for the northbound lanes) is unfunded.

11. The City of San Rafael considered that it is "not reasonably feasible to implement [construction of the High Occupancy Vehicle lanes in the northbound direction] prior to occupancy [of the Property] or to impose [upon the project for the development of the Property] the unfunded \$39 million cost of a measure for mitigation of regional impacts on U.S. 101."

12. The Purchase Agreement contains an indemnification from Buyer to applicant for environmental liabilities arising from the post-transfer discharge of hazardous substances due to Transferee's activities.

13. 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. The transfer of the Property constitutes a project for CEQA purposes.
3. The environmental effects of the project are as stated in the FEIR.
4. The Commission has reviewed the FEIR.
5. It is not reasonably feasible to implement construction of the High Occupancy Vehicle lanes in the northbound direction prior to occupancy of the Property, or to impose upon the project for the development of the Property the unfunded \$39 million cost of a measure for mitigation of regional impacts on U.S. 101.
6. Transfer of the Property should be approved.
7. Following transfer of the Property, Applicant should reduce its annual revenue requirement by \$103,181, remove from rate base the non-depreciable portion of the net book value of the Property, \$90,962, and book the net-of-tax proceeds (\$2,133,759) to the Transition Cost Balancing Account.

**O R D E R**

**IT IS ORDERED that:**

1. Pacific Gas and Electric Company (applicant) may transfer to Village Builders, L.P., Fair Isaac and Company, Inc., Lindaro Office Park, Inc., or North American Lease Plan, Inc. the real and personal property (Property) described in the application, subject to the terms and conditions described therein.
2. Following transfer of the Property, applicant shall reduce its annual revenue requirement by \$103,181, remove from rate base the non-depreciable portion of the net book value of the Property, \$90,962, and book the net-of-tax proceeds (\$2,133,759) to the Transition Cost Balancing Account.

3. In the event that applicant receives additional payments in respect of the Property, based upon contingencies described in the application concerning the type of future development of the Property, such proceeds shall be credited to the Transition Cost Balancing Account while it remains open.

4. Following the closing of the Transition Cost Balancing Account, applicant shall apply to the Commission for ratemaking treatment of any additional payments received in respect of the Property, based upon contingencies described in the application concerning the type of future development of the Property.

5. 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.

6. The authority granted hereby expires if not exercised within one year of the date of this order.

7. Applicant shall provide notice to the Commission, through the Director of the Energy Division, 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.

A.97-10-003 ALJ/RC1/wav

8. Application 97-10-003 is closed.

This order is effective today.

Dated May 7, 1998, at San Francisco, California.

RICHARD A. BILAS

President

P. GREGORY CONLON

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioners

Commissioner Jessie J. Knight, Jr., being necessarily absent, did not participate.