

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific Gas and Electric Company for Authority to Permit Tele-Vue Systems, Inc. to Use Certain PG&E Optical Fibers, Cables, Poles and Other Facilities.

Application 98-05-036
(Filed May 21, 1998)

OPINION

1. Summary

Pacific Gas and Electric Company (PG&E) seeks authority under Section 851 of the Public Utilities (PU) Code to permit Tele-Vue Systems, Inc. to use certain PG&E optical fibers, cables, poles and other facilities, while PG&E in turn uses excess capacity of Tele-Vue optical fibers and other facilities. The Office of Ratepayer Advocates (ORA) has reviewed the application and has no objection. The application is granted.

2. Background

PG&E is a public utility corporation, organized in 1905, providing gas and electric service in California, and is regulated by this Commission. Tele-Vue is a Washington corporation, authorized to do business in California, and operates a cable television distribution system in Northern California. Tele-Vue is a wholly owned subsidiary of TCI Pacific Communications, Inc., and is not regulated by this Commission.

This application was filed on May 21, 1998, and notice of the filing appeared in the Daily Calendar on May 26, 1998. In Resolution ALJ 176-2994 dated June 4, 1998, the Commission preliminarily categorized this proceeding as ratesetting, and determined that hearings were not necessary. No objection to

the categorization has been received; although ORA filed a response to the application on June 25, 1998, it does not oppose the application. It is not necessary to alter the preliminary determinations made in Resolution ALJ 176-2994.

3. Nature of Application

PG&E and Tele-Vue have entered into a license and exchange agreement which permits each party to use certain telecommunications facilities of the other party. Under the agreement, PG&E will be able to use some of Tele-Vue's unused facilities (fiber, cables, conduit and other facilities), and Tele-Vue will be able to use some of PG&E's unused facilities. Both companies have excess capacity in telecommunications facilities in some areas and a need for additional facilities in other areas.

The agreement also gives Tele-Vue the right to access PG&E transmission towers and poles between Pittsburg and Pleasanton for installation of a new fiber optic line, subject to PG&E's approval. Pursuant to Article 5 of the agreement, PG&E retains sole discretion to determine if the use of the towers and poles is legally permitted, and to decide whether such use is compatible with PG&E's use for its own purposes. PG&E would install and maintain the line at the expense of Tele-Vue and, if the line is installed, PG&E would have the right to use a portion of the optical fibers.

Under the agreement, PG&E may become a member of the Bay Bridge Consortium for purposes of gaining access to up to 10 dark fibers (i.e., unused fibers not connected to switching equipment), and Tele-Vue would pay for all costs of joining and maintaining membership in the consortium.

PG&E and Tele-Vue entered into the agreement in 1994 and subsequently amended the agreement twice. The parties have implemented portions of the agreement, and currently PG&E allows Tele-Vue to use some PG&E facilities

under an interim license executed pursuant to General Order 69-C.¹ The term of the license and exchange agreement is for an initial period of 10 years, and can be extended for one or more successive terms of five years. No fee is to be paid by either PG&E or Tele-Vue under the agreement. PG&E notes that it received approval in Decision (D.) 92-07-007 for a similar reciprocal telecommunications facilities use agreement with MCI Telecommunications Corporation, wherein no fee was paid.

PG&E states that the activities authorized by the license and exchange agreement are categorically exempt from the California Environmental Quality Act of 1970 because they involve only minor alterations of existing utility structures.

4. ORA Review

ORA states that the application complies with Rule VII of the Affiliate Transactions Rules established in D.97-12-088, including requirements of Rule VII.C.4 and E. Rule VII requires PG&E to file an advice letter when it wishes to establish a new category of non-tariffed product and service and to comply with Rule VII.C.4 and E. The same requirements apply if an application is filed under Public Utilities Code § 851. Based on its investigation, ORA concludes that the license and exchange agreement here would not constitute a new category of non-tariffed product and service. However, ORA states, because an earlier filing by PG&E submitting a list of existing categories in compliance with D.97-12-088 had not been approved at the time of this application, PG&E appears to be taking

¹ General Order 69-C permits PG&E to allow Tele-Vue conditional use of its facilities subject to termination by PG&E at its sole discretion, which in this case is upon 10 days' written notice.

a cautious approach by addressing relevant affiliate transactions rules in this application.

ORA states that the benefits PG&E and its ratepayers will derive from access to Tele-Vue telecommunications facilities adequately compensates PG&E for permitting Tele-Vue reciprocal access to comparable PG&E facilities. ORA states that PG&E has retained sufficient control over the use of its facilities, particularly use of transmission towers and poles, and that the operation of PG&E's facilities to serve its customers will not be adversely impacted by the agreement.

5. Conclusion

The application is in order. It complies with our affiliate transactions rules. The proposed reciprocal agreement benefits PG&E and its ratepayers. The application should be, and is, approved pursuant to Public Utilities Code § 851.

Findings of Fact

1. PG&E is a gas and electric public utility subject to the jurisdiction and regulation of this Commission.
2. Tele-Vue operates a cable television distribution system in Northern California and is not regulated by this Commission.
3. PG&E and Tele-Vue have entered into a license and exchange agreement which permits each party to use certain excess telecommunications facilities of the other party.
4. The application complies with the Affiliate Transactions Rules established in D.97-12-088.
5. Neither party will pay a fee under the proposed exchange agreement.
6. ORA has reviewed the exchange agreement and has no objection.

Conclusions of Law

1. No public hearing is necessary.
2. Joint use of utility property should be encouraged in appropriate cases because of the obvious economic and environmental benefits.
3. Our approval of this application is exempt from provisions of the California Environmental Quality Act.
4. PG&E should be authorized pursuant to PU Code § 851 to permit the use of certain of its telecommunications facilities to Tele-Vue, while PG&E in turn uses excess capacity of Tele-Vue optical fibers and other facilities.
5. Because of the benefits of the exchange agreement to the utility and to ratepayers, approval of this application should be made effectively immediately.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) is authorized to enter into and to implement and perform the License and Exchange Agreement with Tele-Vue Systems, Inc., as more fully set forth in the application, pursuant to Section 851 of the Public Utilities Code.
2. PG&E shall notify the Director of the Energy Division, in writing, of any substantial amendments to, extension of, or termination of the lease agreement, within 30 days following the execution of such amendments, extensions or termination.

3. The issues presented in Application (A.) 98-05-036 are resolved.
4. A.98-05-036 is closed.

This order is effective today.

Dated September 3, 1998, at San Francisco, California.

RICHARD A. BILAS

President

P. GREGORY CONLON

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioners