

Decision 98-12-047 December 17, 1998

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC COMPANY, a California corporation, and GEORGE MAJORS, for an Order Authorizing the Former to Sell and Convey to the Latter a Certain Parcel of Land in El Dorado and Amador Counties Pursuant to Public Utilities Code Section 851. (Electric) (U 39 E)

Application 98-06-019
(Filed June 9, 1998)

OPINION

Pacific Gas and Electric Company (PG&E or Seller) and George Majors (Buyer) jointly apply for authority to transfer a parcel of unincorporated land located in El Dorado and Amador Counties (the Property) pursuant to a Standard Purchase and Sale Agreement dated November 17, 1997 (the Agreement) and for approval of the ratemaking treatment proposed for the transfer.

The application was filed on June 9, 1998 and was noticed in the Daily Calendar on June 11, 1998. The Office of Ratepayer Advocates (ORA) filed a response stating that the application should be approved with express conditions that PG&E's shareholders will bear any costs associated with the reservations for riparian and appropriative rights which are not funded by new customers pursuant to applicable tariffs and PG&E will obtain from the Buyer a Release and Indemnity Agreement at or prior to the close of escrow. No other protests or responses have been received.

In Resolution ALJ 176-2995, dated June 18, 1998, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received.

Given this status, public hearing is not necessary, and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-2995.

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.

The buyer is an individual. He is purchasing the Property for recreational use.

The Property

The Property consists of approximately 118 acres of unimproved land located in El Dorado and Amador Counties. The portion in El Dorado County is designated as El Dorado County Assessor's Parcel Number 39-060-02. The portion within Amador County has not been assigned a parcel number by the Amador County assessor. PG&E acquired the Property from a predecessor company, Western States Gas and Electric Company, by General Transfer executed June 29, 1928 (recorded in Book 111 of Official Records at p. 20, El Dorado County Records and in Book 47 of Deeds at p. 80, Amador County Records).

Since its acquisition, the Property has been used by PG&E as watershed and managed for timber production. The Property is zoned for timber production. PG&E has also leased the Property for cattle grazing purposes. There are no utility facilities on the Property. However, the Property is traversed by a tributary of the Silver Fork American River.

PG&E has retained the Property in fee in order to protect downstream hydroelectric facilities from excessive siltation that might result from unregulated logging of the Property's timbered watershed lands. Today, however, it is no longer necessary to retain full fee ownership rights to protect downstream

hydroelectric facilities from siltation resulting from logging practices and road construction.

Pursuant to the Z'berg-Nejedly Forest Practices Act, Cal. Publ. Res. Code §§ 4511 *et seq.*, anyone intending to harvest trees must first submit a Timber Harvesting Plan (THP) for approval by the California Department of Forestry (CDF). (*Id.* §§ 4571, 4581.) The proposed THP must describe the methods to be used in cutting and removing trees and to avoid excessive accelerated erosion from timber operations. (*Id.* §§ 4582(d) & (e).) By law, PG&E and others have an opportunity to examine the THP and provide comments on it. (*Id.* §§ 4582.4, 4582.6.) As part of its approval process, CDF is required to consider public comments and make recommendations for mitigation necessary to protect the environment. (*Id.* § 4582.7.)

Thus, the THP process provides PG&E with full opportunity to review and comment on proposals for logging on watershed lands. Furthermore, the process ensures that downstream beneficial uses – such as hydroelectric generation, fish habitat, and recreation – will be protected by orders enforced by CDF. Consequently, PG&E no longer needs to retain full fee ownership in order to protect the watershed and its downstream hydroelectric production.

Based on the analysis described above, and 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 reservation of riparian and appropriative rights associated with the Property, it is not foreseeable that the Property will ever again be useful for public utility purposes. PG&E, therefore, determined that it 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 it retained all riparian and appropriative rights which are annexed to, inherent in, and part and parcel of the

Property. PG&E also believes that by disposing of unused fee interests and 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 Buyer to convey the fee interest in the Property subject to reservations for riparian and appropriative rights. Pursuant to Public Utilities (PU) Code § 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 Buyer are jointly filing this application.

Reservations

Pursuant to the Agreement, PG&E shall reserve all riparian and appropriative rights, whether prescriptive or otherwise, which are annexed to, inherent in, and part and parcel of the Property, together with all right, title and interest of any nature whatever in and to the waters which are now or hereafter located or flowing on, under or abutting the Property. However, subject to any and all prior appropriative rights to such waters, including, without limitation, any existing reservations with the California Water Resources Control Board or other governmental agency, Buyer shall be entitled to use reasonable amounts of water on the Property for domestic non-commercial uses and pasturing livestock only. PG&E shall also reserve the right to enter onto the Property and take such other reasonable action as may be necessary to enforce PG&E's reserved water rights.

PG&E has considered whether the reservations are sufficient not only for present but for all foreseeable future needs. Because PG&E believes that the reservations are sufficient for all foreseeable future needs, any future costs which are not funded by new customers pursuant to the tariffs will be borne by the Company and will not be reflected in rates.

The Purchase Agreement

The terms and conditions of the proposed sale are contained in the Purchase and Sale Agreement by and between PG&E and Buyer. Under the terms of the Agreement, PG&E will sell and convey to Buyer the Property, together with all easements, rights and privileges appurtenant thereto. The purchase price of the Property is one hundred seventy seven thousand five hundred dollars (\$177,500).

According to the Agreement, the close of escrow for this transaction shall occur within five days of the receipt of Commission approval of the transaction, but not later than October 31, 1998. However, the close of escrow is subject to such extensions as may be agreed upon between PG&E and Buyer.

Original Cost, Book Value and Purchase Price

The total original cost of the Property was \$950. The purchase price is \$177,500 (less broker fees estimated to be \$3,550) payable to PG&E at the close of the sale.

The Property was exposed to a broad market through a written invitation to bid. This was accomplished with the assistance of a real estate broker. The invitation to bid package was mailed to approximately 200 prospective purchasers. Nine offers were received for the Property. Buyer submitted the best offer. Therefore, the purchase price directly reflects the fair market value of the Property.

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 Regs. §§ 15061(b)(3) & 15301(b).)

In this application, PG&E seeks authority under PU Code § 851 to transfer approximately 118 acres of unimproved land in El Dorado and Amador Counties to Buyer. 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. (PG&E, 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 foreseeable indirect changes to the environment. As noted above, the Property has been used as watershed and managed for timber production. 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. Because the sale has no potential to result in a direct or reasonably foreseeable indirect physical change in the environment, it is not a project under CEQA (14 Cal. Code of Regs. § 15378) and is, therefore, not subject to review under CEQA (14 Cal. Code of Regs. § 15002(d)). (See PG&E, *supra*, mimeo., at 5.)

Moreover, to the extent that Buyer 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. Instead, PG&E urges the Commission to defer to the state and local authorities having jurisdiction over Buyer's proposed changes in use to conduct such environmental review as they

may deem appropriate at the time Buyer submits an application for change in use.

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 Regs. § 15004.)

As noted above, Buyer plans to use the Property for recreation purposes, but Buyer's plans are contingent upon numerous factors, including approval from the Commission for the sale of the Property. In light of these contingencies, PG&E believes that it would be premature for the Commission to conduct CEQA review at this time. Instead, PG&E urges the Commission to defer to the appropriate state and local authorities having jurisdiction over Buyer's 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 Buyer proposes 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 Buyer's 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. Country 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).

Finally, PG&E submits that should Buyer decide to harvest timber on the Property, any environmental considerations related to that use should properly be addressed pursuant to the procedures set forth in the Forest Practices Act. Under Pub. Res. Code Section 21080.5, the Secretary of the California Resources Agency may certify a regulatory program of a state agency as exempt from the requirement of environmental impact report (EIR) preparation, if the program requires that a project be preceded by the preparation of a written project plan containing sufficient environmental impact information. (See *Environmental Protection Information Center, Inc. v. Johnson*, 170 Cal. App. 3d 604, 610 (1985).) Pursuant to this section, the Secretary has certified the regulation of the timber industry as exempt from EIR preparation. In other words, the Secretary has determined that the THP preparation, obviates the need for separate EIR preparation. (*Id.* at 611, citing *Natural Resources Defense Council, Inc. v. Arcata Nat. Corp.*, 59 Cal. App. 3d 959, 976-77 (1976).)

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, Buyer acknowledges 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 Buyer for the presence of hazardous materials either on or affecting the Property.

Buyer has agreed to execute and deliver to Seller at or prior to the close of escrow, a Release and Indemnity Agreement containing a general release in which it waives and relinquishes any and all rights it 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 therein, the parties do not expect any claim for environmental damage which may affect PG&E or its ratepayers after the close of escrow.

Ratemaking Treatment

The application shows the 1998 revenue requirement associated with the Property. Based on property taxes of \$309, annual timber management costs of approximately \$200, and PG&E's 1998 authorized cost of capital for generation-related facilities (6.77% on equity; 7.13% on rate base, based on the reduced rate of return adopted in the Transition Cost Phase 2 Decision, D.97-11-074), offset by annual cattle grazing income of approximately \$350, the 1998 revenue requirement, including taxes, franchise fees and an allowance for uncollectibles, is \$260. These costs related to the Property are recovered in the Transition Cost Balancing Account (TCBA) through the Hydroelectric/Geothermal Revenue Requirement as established in the Generation Performance-Based Ratemaking (Gen-PBR) Proceeding in D.97-12-096.

Because the revenue requirement determined in the Gen-PBR is authorized at an aggregate level, it is impossible to specifically identify these costs in the Gen-PBR decision. Nevertheless, these costs are presently included in rates since they are embedded in PG&E's adopted rate base and expense estimates.

Therefore, in this case, the Property's \$260 revenue requirement is included in the revenues authorized by D.97-12-096.

Pursuant to the Purchase Agreement, PG&E is reserving all riparian and appropriative rights which are annexed to, inherent in, and part and parcel of the Property. This reservation will have no effect on PG&E's rate base. Additionally, selling the Property allows PG&E to avoid maintenance costs on fee ownership property that was being underutilized for utility purposes.

Pursuant to Assembly Bill (AB) 1890 and the Commission's Preferred Policy Decision (D.95-12-063, as modified by D.96-01-009), electric utilities such as PG&E were strongly encouraged to divest voluntarily at least 50% of the fossil-fueled power plants within their service territories. In the Preferred Policy Decision, the Commission stated that transition costs associated with divestiture would be collected through a nonbypassable competition transition charge (CTC) applicable to all retail customers. In the Transition Cost Phase 1 Decision (D.97-06-060), the Commission ordered each electric utility to establish a TCBA, with separate sections for costs and revenues. In the Transition Cost Phase 2 Decision (D.97-11-074), the Commission directed that the gain or loss resulting from sales of divested assets, including land, should flow through the CTC Revenue Section of each utility's TCBA.

The Property has historically been used for generation-related purposes. Consistent with the Commission directives discussed above, the after-tax gain on sale for the Property should flow through PG&E's TCBA. In addition, upon close of the sale, PG&E will remove the property from rate base and adjust the entries

in the TCBA to reflect the reduction of the revenue requirement associated with the property. In summary, PG&E proposes to:

- Retire the asset from rate base
- Adjust the Hydroelectric/Geothermal Revenue Requirements in the TCBA
- Book the net-of-tax proceeds to the CTC Revenue Section of the TCBA

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

Debit - Cash	\$173,950
Credit - Land	950
Credit - Transition Cost Balancing Account	102,509
Credit - Tax Liability	70,491

The proposed ratemaking treatment is consistent with the Commission's decisions on electric industry restructuring and, by applying the after-tax proceeds to the TCBA, it provides benefits to ratepayers and an incentive to PG&E to maximize the potential gain on the sale of the land.

The sale of the Property will result in a reduction of the transition cost responsibility for ratepayers of PG&E. The ratemaking mechanism proposed in this application is consistent with the ratemaking directives issued by the Commission in D.97-11-074 and D.97-06-060, and embraces the Commission's goal of having a rapid and smooth transition to retail electric competition.

The Proposed Sale Is in the Public Interest

The relevant inquiry in an application for transfer is whether the transfer will be adverse to the public interest. (*See Re Universal Marine Corporation*, 14 CPUC2d 644, 646 (1984).) The parties here believe that the proposed sale of the

Property to the Buyer, under the terms and conditions in the Agreement, is in the public interest because, subject to the reservations described above, the Property to be sold is no longer necessary or useful for public utility purposes. PG&E's need for the riparian and appropriative rights will be preserved by the reservations.

Moreover, selling the Property will actually be more advantageous to PG&E and its ratepayers than continuing to own the Property. In particular, with the reservations, PG&E would retain all riparian and appropriative rights necessary for current and future operations, with none of the obligations attendant to ownership of the Property. Specifically, PG&E would no longer be responsible for payment of property taxes associated with the Property, nor would PG&E be responsible for the liability for injury to trespassers or others who may enter onto the Property.

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 is determining that its present and future requirements on some of these parcels can now and for the future be met by retention of easement rights or, as in this case, the reservation of riparian and appropriative water rights, while disposing of the basic fee interests in these parcels.
3. By selling unused fee interests in such properties and retaining easements or reservations, 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 118 acres of unimproved land located in El Dorado and Amador Counties is land where PG&E has determined that its present and future public utility requirements are capable of being met through use of reservation of water rights 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 Property to George Majors, seller retaining agreements sufficient for its present and future utility requirements.

6. PG&E proposes ratemaking treatment as follows:

- a. PG&E's rate base would be reduced by the \$950 cost of the Property.
- b. PG&E's electric base revenues would be reduced by an annualized amount of \$260.
- c. Net-of-tax proceeds would be booked to the CTC Revenue Section of the TCBA.

7. The application states PG&E's intention to have shareholders bear any costs associated with the reservations for riparian and appropriative water rights which are not funded by new customers pursuant to applicable tariffs.

8. By allocating all net-of-tax proceeds to the CTC Revenue Section of the TCBA, 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 transition cost burden on ratepayers.

9. Retained reservations of water rights 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 is in the public interest.

10. Because of 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.

11. As the sale and transfer involves no change in use beyond previously existing uses, the proposed sale has no potential to result in a direct or reasonably foreseeable indirect physical change in the environment.

12. As Buyer's plans to utilize the Property are presently undefined and contingent upon numerous factors, CEQA review is deferred to the appropriate state and local authorities having jurisdiction over Buyer's use of the Property.

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 the application should be approved.
3. The proposed sale and transfer does not constitute a project under CEQA and, therefore, is not subject to review under CEQA.

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 George Majors the Property as set forth in Application 98-06-019, subject to the reservations therein described.
2. Within 10 days of the actual transfer, PG&E shall notify the Commission and Office of Ratepayer Advocates in writing of the date of 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 set forth in the application and approved in this decision shall be followed by PG&E.

5. Completion of the sale and transfer authorized by this order shall obligate PG&E's shareholders to bear any costs associated with the reservations for riparian and appropriative water rights which are not funded by new customers pursuant to applicable tariffs.

6. Approval of this sale and transfer is conditional upon Buyer's compliance with applicable state and local environmental regulations.

7. Approval of this sale and transfer is conditional upon PG&E obtaining from Buyer, at or prior to the close of escrow, the Release and Indemnity Agreement described in the application.

8. Application 98-06-019 is closed.

This order is effective today.

Dated December 17, 1998, at San Francisco, California.

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