

ORIGINAL

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 Lease to Metricom, Inc. Certain Space on Overhead Electric Distribution Facilities for the Installation and Maintenance of Telecommunications Equipment.

Application 98-08-025
(Filed August 18, 1998)

OPINION

1. Summary

Pacific Gas and Electric Company (PG&E) seeks authority to lease available space on certain distribution power poles and street light poles to Metricom, Inc., (Metricom) which would use the space to install low-power, packet-sized wireless radio equipment for its high-speed digital telecommunications services. The Office of Ratepayer Advocates (ORA) recommends fiscal and reporting requirements to further safeguard ratepayer interests. The application is granted, subject to conditions. This proceeding is closed.

2. Background

PG&E and Metricom have executed a license and lease agreement that would permit Metricom to use available space on an unspecified number of PG&E's power poles and street light poles in northern and central California. Metricom will install radio repeaters, each about the size of a shoebox, to provide its wireless telecommunications service, operating under the trademark "Ricochet." The Ricochet network offers high-speed, wide-area access to on-line services, the Internet and local area networks.

PG&E states that the lease will generate additional revenues for the benefit of its customers. Fees for an initial 10-year term are \$375 per pole attachment for the Bay Area and \$275 per pole attachment outside the Bay Area, payable in the first year. Under the licensing provisions of the agreement, PG&E in 1997 collected \$171,210 from Metricom for pole installations.

Metricom is a public company founded in 1985, with headquarters in Los Gatos, California. Metricom initially sold wireless systems to the electric utility industry, promising to improve operating efficiency and service. Over time, these systems also were offered to water, wastewater and gas production and distribution industries. Metricom later turned to consumer applications for its technology, developing the Ricochet network in 1993. The network is aimed at corporate, consumer and education markets in which there is a need to obtain information and perform transactions on line without the use of telephone lines. The Ricochet network operates under Part 15 of Federal Communications Commission rules. The service is commercially available to subscribers in the San Francisco, Seattle, and Washington, D.C., areas, and at a number of universities and corporations across the nation.

3. Terms of the Lease

In order to allow Metricom to proceed pending regulatory review, the parties have structured the agreement as a license which converts to a 10-year lease upon Commission approval of this application. Under authority of General Order 69-C, PG&E has permitted Metricom to install 1,100 radio receivers on PG&E poles. However, Metricom needs approval of the 10-year lease to be sure that its use of the poles will not be interrupted.

Under the agreement, Metricom will identify the locations where it plans to install radio receivers. PG&E then determines whether those installations can be made without interfering with PG&E's distribution system. The 10-year term

of the agreement may be renewed one time for an additional 10 years. The agreement, including applicable fees, is attached to the application as Appendix A.

PG&E states that revenue for lease of the space is treated as miscellaneous operating revenue credited to PG&E's ratepayers in its current 1999 general rate case proceeding (Application (A.) 98-08-025, page 7).¹

4. Benefits of the Lease

PG&E states that the lease will generate revenue benefiting ratepayers without sacrifice to PG&E's service. At the same time, by using PG&E's poles, Metricom avoids having to construct its own facilities and will be able to develop its network more quickly.

In addition to bringing additional revenue to PG&E, the application states that other parties will benefit. Cities in which rights of way are used by Metricom will in some instances receive franchise fees from Metricom. The Ricochet system will be used by public service agencies. The Los Angeles Police Department is testing a wireless field data capture system that would enable police officers to send and receive information directly from scenes of incidents without having to use telephone lines.

5. Comments by ORA

ORA has reviewed the application and does not oppose PG&E's request to lease space on its distribution and street light poles to Metricom. However, ORA does have some concerns.

¹ In response to an ORA data request, PG&E noted that 1997 revenue from the pole attachments was booked incorrectly to PG&E revenue account 456 (4560001) (Other Electric Revenues). PG&E has transferred those funds into account 454 (454010) (Rent from Electric Property).

First, ORA notes that the agreement is similar to one between Metricom and Southern California Edison Company (Edison),² in which Metricom agreed to pay Edison more than it is paying PG&E. ORA states that it does not know why payments are less to PG&E, but it recommends that we condition our approval of this application on the agreement of the parties that, if this 10-year lease is renewed, the fees per pole attachment will be set at market rates for the renewal term.

Second, ORA recommends that addenda to the lease adding new sites for the installations should be furnished for review to the Commission's Energy Division within 30 days of the execution of such amendments, and to the Telecommunications Division on a semi-annual basis. ORA notes that this is consistent with the Commission's recent decision approving the agreement between Edison and Metricom.³

Finally, ORA agrees with PG&E that the lease revenues should be included in PG&E's 1999 general rate case, since PG&E does not have a performance-based ratemaking mechanism in place.

In a late-filed response,⁴ PG&E states that since the rentals for the 10-year term are paid in the initial year, the time value of the payments brings the rates within what it believes is market value. PG&E does not oppose a requirement that rentals be at market levels, subject to Commission requirements in effect at time of renewal. PG&E also proposes annual reporting requirements to reduce

² In re Application of Southern California Edison Company, Decision (D.) 98-02-110 (February 19, 1998.)

³ Ibid.

⁴ PG&E moves for leave to late file on grounds that its failure to file was inadvertent. PG&E represents that no party opposes its motion. The motion to late file is granted.

the reporting burden. Our order today balances the parties' recommendations on these required reports.

6. Compliance with the Affiliate Transaction Rules

Commission D.97-12-088 established, and D.98-08-035 modified, rules which govern transactions between energy utilities and their affiliates, and the provision by the utilities of nontariffed products and services. The applicants refer to the applicable rules on pages 8-10 of A.98-08-025. This contract with Metricom is an existing nontariffed service, as PG&E describes in its Advice Letter 2063-G/1741-E, "a list of existing products and services," on page 9.⁵ As such, Rules VII.C.4 and VII.G apply here. Rule VII.C.4 lists five conditions which must be met:

- a. The nontariffed product or service utilizes a portion of a utility asset or capacity;
- b. Such asset or capacity has been acquired for the purpose of and is necessary and useful in providing tariffed utility services;
- c. The involved portion of such asset or capacity may be used to offer the product or service on a nontariffed basis without adversely affecting the cost, quality, or reliability of tariffed utility products and services;
- d. The products and services can be marketed with minimal or no incremental ratepayer capital, minimal or no new forms of liability or business risk being incurred by utility ratepayers, and no undue diversion of utility management attention; and
- e. The utility's offering of such nontariffed product or service does not violate any law, regulation, or Commission policy regarding anticompetitive practices.

The rules require that the utility inform the Commission by advice letter of the utility's existing or new nontariffed products and services, and how their

⁵ We grant authority in this decision for the lease sought by PG&E in its application. We do not address Advice Letter 2063-G/1741-E in this decision.

provision complies with the rules. However, Rule VII.G requires that, if Commission authority is sought pursuant to Section 851, "the utility need not file a separate advice letter, but shall include in the application those items which would otherwise appear in the advice letter as required in this Rule."

The record indicates that the conditions specified by the Affiliate Transaction Rules have been satisfied for this existing nontariffed service provided by PG&E to Metricom.

7. Discussion

Section 851 of the Public Utilities (Pub. Util.) Code provides that no public utility "shall...lease...[property] necessary or useful in the performance of its duties to the public...without first having secured from the Commission an order authorizing it so to do." The relevant inquiry for the Commission in § 851 proceedings is whether the proposed transaction is adverse to the public interest. (See, e.g., Universal Marine Corporation (1984) 14 CPUC2d 644.)

The proposed lease satisfies this test. The public interest is not harmed since the lease will not affect the utility's operation of its distribution and street light poles. Indeed, the Commission has held that the public interest is served when utility property is used for other purposes without interfering with the utility's operation.⁶ Because the proposed agreement will increase the revenues PG&E can obtain from secondary use of the facilities, with no additional ratepayer risk, the application should be approved.

⁶ In D.93-04-019, we observed: "Joint use of utility facilities has obvious economic and environmental benefits. The public interest is served when utility property is used for other productive purposes without interfering with the utility's operation or affecting service to utility customers."

We agree with ORA's recommendation that addenda to the lease should be furnished to the Commission staff, as this will provide a safeguard in monitoring revenue accumulation. We also agree that our approval should be conditioned on the parties' agreement that renewal of the lease in 10 years will be based on market rates for use of the space, subject to Commission requirements in effect at time of renewal. We note that, in the Edison-Metricom agreement, the California Cable Television Association made an appearance to urge, among other things, that current rates for such leased space should not be precedential.

In Resolution ALJ 176-2999, dated September 3, 1998, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. Our order today deals with the ORA protest. No other protests have been received. A public hearing is not necessary, nor is it necessary to alter the preliminary determination in Resolution ALJ 176-2999.

The Commission's staff has determined that the action proposed by the applicant constitutes a "project" under the California Environmental Quality Act (CEQA). However, the lease transaction itself qualifies for an exemption from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines, and therefore no further environmental review by the Commission is required.

The application is granted, subject to the terms and conditions set forth below.

8. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g) and Rule 77.1 of the Rules of Practice and Procedure. Metricom filed a motion for leave to appear as a party for the limited purpose of submitting comments. That motion is granted. Metricom in its comments objects to our condition for approval that, if the lease is renewed

after the first 10-year term, fees per pole attachment should be set at market rates for the renewal term. Metricom states that the renewal fee it negotiated with PG&E was the same as the initial fee, adjusted for inflation, and the Commission has no reason to condition approval on a change in that provision. The arguments now raised by Metricom were considered earlier in the ORA protest and PG&E's response to the protest, and Metricom elected not to participate at that time. Its objection now adds no new information, and we decline to make the change requested by Metricom.

PG&E in its comments objects to reporting semi-annually on any substantial contract amendments on the grounds that most such reports will state that no changes occurred. The objection has merit, and we have revised that requirement to provide for reports within 30 days of substantial contract amendments, the same requirement we imposed on Edison in D.98-02-110. PG&E also asks that it provide copies of addenda specifying additional installations of radio equipment on an annual basis, rather than a semi-annual basis. A semi-annual report of such addenda serves the public interest in providing timely review by the Commission's staff. We are not persuaded that semi-annual reports are unduly burdensome. We decline to change this requirement. However, we do require that the reports go to the Telecommunications Division and also to the Energy Division, since the Energy Division will examine the data from the standpoint of reliability of PG&E poles.

Findings of Fact

1. PG&E is a public utility subject to the jurisdiction and regulation of this Commission.
2. PG&E seeks to lease available space on certain of its distribution and street light poles in northern and central California to Metricom for installation of packet radios used in wireless telecommunications services.

3. Subject to Commission authorization required under Pub. Util. Code § 851, PG&E has negotiated a lease for the available property to provide higher future revenues with no interference with the operation of its pole facilities.

4. The proposed lessee, Metricom, is a public company experienced in the design, construction and operation of wireless telecommunications systems.

5. Metricom will finance, construct and maintain the equipment it installs on PG&E poles, bearing the costs and making lease payments to PG&E.

6. Revenue will be treated as miscellaneous operating revenue credited to PG&E's ratepayers in the company's 1999 general rate case.

7. It can be seen with reasonable certainty that the proposed use will produce no significant effect on the environment.

8. ORA does not oppose the application, but it recommends that approval be conditioned on the parties' agreement that the attachment fee will be set at market rates in the lease renewal, and that PG&E will notify the Commission staff of amendments to the lease.

9. This contract with Metricom is an existing nontariffed service, as PG&E describes in its Advice Letter 2063-G/1741-E.

10. As such, Rules VII.C.4 and VII.G of the Commission's Affiliate Transaction Rules apply here.

11. The record indicates that the conditions specified by the Affiliate Transaction Rules have been met for this nontariffed service provided by PG&E to Metricom.

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 Pub. Util. Code § 851 to lease the designated facilities to Metricom on the terms and conditions set forth in the application, and on the additional conditions set forth in today's order.

5. Because of the benefits of this lease agreement for the utility and for ratepayers, approval of this application should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) is authorized to enter into the lease and license agreement with Metricom, Inc., providing for installation of certain radio facilities on PG&E distribution and street light poles, under the terms and conditions set forth in this application and pursuant to this order.

2. As received, all revenues from the lease authorized herein shall be treated as miscellaneous operating revenue to be credited to PG&E's ratepayers in the company's general rate cases.

3. 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 of any such amendment, extension or termination.

4. Copies of addenda to the lease agreement specifying additional installations of radio equipment shall be furnished semi-annually to the Director, Telecommunications Division, and the Director, Energy Division, along with a written statement by PG&E that the leasing of the space on the specific poles will not adversely impact PG&E's public utility operations.

5. The authorization granted herein is conditioned upon the parties' agreement that attachment fees shall be set at market rate in any renewal term of

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the lease agreement, subject to Commission requirements in effect at time of renewal.

Application 98-08-025 is closed.

This order is effective today.

Dated March 4, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners