

Decision 00-01-014 January 6, 2000

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Pacific Gas and Electric Company (U 39 E) for Commission Approval to Permit Electric Lightwave, Inc. to Use Certain PG&E Transmission Facilities for Fiber Optic Communication Equipment.

Application 99-09-036  
(Filed September 14, 1999)

**OPINION**

**1. Summary**

Pacific Gas and Electric Company (PG&E) seeks authority to permit Electric Lightwave, Inc. to install and use fiber optic lines on certain PG&E transmission towers, substations, rights-of-way and other facilities. The Office of Ratepayer Advocates (ORA) filed comments urging that the Commission require safeguards if and when approval of the application is granted. The application is approved, with conditions addressing ORA's concerns.

**2. Background**

PG&E owns and maintains electric transmission towers, electric substations and rights-of-way in Northern and Central California. Effective April 1, 1998, PG&E transferred operational control of its electric transmission system to the Independent System Operator, but the company continues to own and maintain the transmission system. According to PG&E, the towers, substations and rights-of-way have sufficient space to accommodate optical fiber lines and facilities.

Electric Lightwave provides telecommunications services in California.<sup>1</sup> By installing fiber optic facilities on PG&E's transmission towers, Electric Lightwave will save money and avoid disruptive construction. PG&E would be permitted to use some of the fiber optics capability for its electric and gas utility communications.

Accordingly, on December 31, 1997, Electric Lightwave and PG&E entered into an agreement to (1) allow Electric Lightwave to install fiber optic facilities on the PG&E transmission system, (2) vest bare legal title in the fiber optic facilities in PG&E subject to Electric Lightwave's right to use the optical fibers to provide service to its customers, and (3) allow PG&E to use a portion of the optical fibers in connection with PG&E's communications needs. The agreement initially gives Electric Lightwave a revocable license to use PG&E's facilities, consistent with General Order 69-C. Upon receipt of a final, nonappealable Commission order approving this application pursuant to Pub. Util. Code § 851, the revocable license would convert to an irrevocable license.

### **3. Public Interest Considerations**

PG&E states that the agreement benefits both companies and their customers. The agreement allows PG&E to obtain expanded utility communications capacity with minimal investment and at low annual expense. PG&E states that the use of transmission towers, substations and right-of-way has been structured to avoid interference with the transmission system's operations. The fiber optic facilities on the transmission towers will function as a

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<sup>1</sup> The Commission has granted Electric Lightwave certificates of public convenience and necessity to (1) construct fiber optic cable facilities and provide high-speed digital private line communications (Decision (D.) 94-03-073); (2) provide low-speed private line service and resell intrastate service (D.95-09-115); (3) operate as a facilities-based local exchange carrier (D.95-12-057), and (4) resell local exchange service (D.96-02-072).

static wire that will give additional protection to transmission lines against lightning.

For its part, Electric Lightwave gains communication capacity on a cost-effective basis. The fiber optic facilities contemplated form a part of the company's larger fiber optic ring network connecting Los Angeles and Portland, Oregon, and intermediate points over two diverse pathways traversing much of the western United States. Retail and carrier customers of Electric Lightwave will have access to a new competitive alternative along communication routes that now are capacity constrained.

The agreement reserves to PG&E the right to use its portion of the dark fibers to provide ancillary energy-related communications services to PG&E customers. PG&E states that it does not now intend to provide such service to utility customers, but has simply preserved the right as a future possibility. PG&E states that it would not provide telecommunications service to the public without first seeking approval of the Commission.

Under the agreement, Electric Lightwave is obligated to pay PG&E an annual fee per route mile, and PG&E has agreed to pay Electric Lightwave an annual fee for the uses of the dark fibers. PG&E states that the annual fee it will receive represents fair market value for use of transmission towers and related facilities. The cost of installing the facilities, including an additional shield wire, is to be borne by Electric Lightwave.

PG&E states that the agreement is consistent with previous Commission decisions approving cooperation between energy utilities and communications companies in building fiber optic networks by using available space in utility facilities. According to PG&E, similar uses have been approved in Re Southern California Edison Company (1994) 55 CPUC2d 126, and Re Pacific Gas and Electric Company and Tele-Vue Systems, Inc. (1998) D.98-09-013.

#### **4. Proposed Ratemaking Treatment**

The annual license fee that Electric Lightwave will pay to PG&E is for the use of transmission towers, land at substations, and rights-of-way for the specific route identified in the agreement. Distribution rights-of-way are not included in the scope of the agreement.

In the past, PG&E has accounted for revenues it receives as license and lease fees as credits above-the-line to ratepayers for general rate case purposes. However, with electric industry restructuring, jurisdiction for rates and service over PG&E's transmission system now is vested in the Federal Energy Regulatory Commission (FERC). All costs for PG&E's transmission system are part of FERC ratemaking for transmission service in PG&E's transmission owner cases. Consequently, PG&E states that the license and lease fee revenues here are subject to FERC accounting treatment rather than this Commission's authority, since the PG&E facilities for which fees will be paid are part of the transmission system.

Accordingly, PG&E states that contemporaneously with this filing, it is filing a request with FERC for a declaratory order to seek clarification of FERC treatment of the fee revenues associated with transactions like this one. PG&E states that its proposal to FERC is generally consistent with the ratemaking treatment recently adopted by the Commission for new products and services.

#### **5. Concerns of Ratepayer Advocates**

ORA states that it does not object to the agreement between PG&E and Electric Lightwave, provided that any approval include a requirement that both companies comply with overhead electric line safety requirements found in General Order 95 and that any access by an affiliate of PG&E to the dark fiber must comply with the affiliate transaction rules in effect at that time. As to

affiliate transactions, ORA explains that its concern is that an affiliate of PG&E might one day get preferential access to the dark fiber.

In reply comments, PG&E states that it will require Electric Lightwave to install its fiber optic cable in a manner that meets or exceeds the requirements in General Order 95. As to affiliate transactions, PG&E disputes ORA's interpretation of the affiliate transaction rules, but it agrees substantively that it will be bound by the then current affiliate rules if affiliate use of the dark fiber is permitted. PG&E does not comment on another suggestion of ORA – that the Commission reserve ruling on the ratemaking treatment of lease and license revenues pending FERC's response to the request for a declaratory order.

## **6. No Environmental Impact**

In previous applications where we have examined agreements about shared use of facilities like these, we have concluded that environmental review for compliance under the California Environmental Quality Act, Pub. Resources Code §§ 21000, et seq. (CEQA) is not required. The Commission's staff has determined that actions like those proposed here constitute a "project" under CEQA. However, since it can be seen with certainty that no significant effect on the environment could result from our granting the requested authorization, the proposed project itself qualifies for an exemption from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines. Therefore, no further environmental review by the Commission is required.

## **7. Conclusion**

The application is in order. We conclude that the cable agreement is in the public interest and benefits the applicants and ratepayers. Accordingly, we grant the relief requested and exercise our authority under Pub. Util. Code § 851. As recommended by ORA, our order requires that construction must comply with General Order 95, and that any use of the dark fiber by a PG&E affiliate must be

in accord with then effective affiliate transaction rules of this Commission. We will not defer our order pending an accounting ruling by FERC, but we will consider a petition for modification should that ruling raise public policy concerns.

In Resolution ALJ 176-3024 dated October 7, 1999, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. Based on the record, we conclude that a public hearing is not necessary, nor is it necessary to alter the preliminary determinations in Resolution ALJ 176-3024.

### **8. Uncontested Decision**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

### **Findings of Fact**

1. PG&E is a public utility corporation subject to the jurisdiction of this Commission.
2. Electric Lightwave is a telecommunications company operating fiber optic facilities.
3. PG&E and Electric Lightwave have entered into a license agreement that permits Electric Lightwave to install fiber optic facilities on the PG&E transmission system and allows PG&E to use a portion of the optical fibers for its own communications needs.
4. ORA has reviewed the license agreement and has no objection provided that the companies comply with the Commission's overhead line safety requirements and provided any use of the fiber system by a PG&E affiliate be in compliance with affiliate transaction rules.

**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 CEQA.
4. PG&E should be authorized pursuant to Pub. Util. Code § 851 to permit the use of certain of its transmission facilities by Electric Lightwave pursuant to the agreement accompanying the application.
5. The contemplated construction should comply with our General Order 95, and use of the fiber optic system by a PG&E affiliate should comply with then applicable affiliate transaction rules.
6. Because of the benefits of the agreement to applicants and to 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 and to implement and perform the Optical Fiber Installation and IRU Agreement with Electric Lightwave, Inc.
2. In constructing the fiber optic system, PG&E and Electric Lightwave, Inc., shall at all times comply with the safety standards of General Order 95.
3. Should use of the fiber optic system be permitted for a PG&E affiliate, such use shall comply with the then effective affiliate transaction rules of this Commission.

A.99-09-036 ALJ/GEW/sid\*

4. The issues presented in Application (A.) 99-09-036 are resolved.
5. A.99-09-036 is closed.

This order is effective today.

Dated January 6, 2000, at San Francisco, California.

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

I abstain.

/s/ LORETTA M. LYNCH  
Commissioner