

Decision 00-04-065 April 20, 2000

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

Application of PACIFIC GAS AND ELECTRIC COMPANY (U 39 E), for Authorization to Sell and Convey to Duke Energy Moss Landing, LLC, Certain Emission Reduction Credits issued by the "Bay Area Air Quality Management District" or "Monterey Bay Unified Air Pollution Control District" Pursuant to Public Utilities Code Section 851.

Application 99-11-006  
(Filed November 2, 1999)

**O P I N I O N****Summary**

Pacific Gas and Electric Company (PG&E) seeks Commission approval, pursuant to Pub. Util. Code § 851, to sell to Duke Energy Moss Landing, LLC (Duke) certain Emission Reduction Credits (ERCs). Duke was the winning bidder in PG&E's auction of its Monterey Bay Unified Air Pollution Control District (MBUAPCD) Certificate Nos. 53a-e.<sup>1</sup> PG&E also requests that the Commission (1) approve the ratemaking treatment proposed in its application; (2) find that the fair market value of the ERCs is the price resulting from the sale process; and (3) authorize it to credit the gain on sale of the ERCs to offset transition cost recovery, as specified in Decision (D.) 97-11-074. The application is granted.

---

<sup>1</sup> PG&E concurrently filed separate applications for the other winning bidders of its ERCs.

### **Categorization and Waiver of Review Period**

In Resolution ALJ 176-3027, dated November 18, 1999, 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 176-3027.

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.

### **Procedural Background**

Applicant PG&E is a public utility subject to the jurisdiction of the Commission. On November 2, 1999, PG&E filed an application for authorization to sell and convey MBUAPCD Certificate Nos. 53a-e to Duke (Application). Notice of the Application appeared in the Daily Calendar on November 4, 1999. No protests were filed. The Office of Ratepayer Advocates (ORA) filed a response on December 6, 1999, and does not oppose the request.

Accompanying PG&E's Application was a motion requesting a protective order under Pub. Util. Code § 583, General Order 66-C, and Rule 45 of the Commission's Rules of Practice and Procedure. PG&E sought to keep confidential the proposed sale price of the ERCs and redacted the auction results from the public version of its Application. PG&E provided unredacted versions of the Application to the Commission and ORA. ORA did not oppose the requested protective order and on January 13, 2000, the assigned administrative law judge (ALJ) issued a ruling granting the protective order.

### **Discussion**

No public utility may transfer any property that is necessary or useful in the performance of its duties to the public without first having secured the

Commission's authorization. (Pub. Util. Code § 851.) ERCs are used by owners and operators of electric generating facilities to offset certain air pollution emissions under a program established by federal statute. MBUAPCD issued ERCs to PG&E in acknowledgement of PG&E's emissions reductions in excess of California Clean Air Act requirements. The ERCs represent the specific emissions reduced by pollutant (tons per year of nitrogen oxide, particulates, precursor organic compounds, sulfur oxide, and carbon monoxide). PG&E banked its ERCs so it could use the credits at a later time anywhere within the MBUAPCD air basin, or so the credits could be sold.

PG&E sold the majority of its fossil-fueled power plants and has no plans for the development of additional generation resources within the MBUAPCD air basin so the ERCs are no longer necessary and useful to its utility operations. In August, 1999, PG&E offered its ERCs for sale through an auction. PG&E advertised the availability of the ERCs, then sent proposals to purchase the ERCs to potential bidders, and announced the auction through various news and wire services and the internet. PG&E then provided the Auction Protocols to interested bidders. PG&E attached a copy of the Protocols to its Application. Bidders then submitted a price-only bid(s), and then PG&E notified the winning bidders. Duke submitted the only bid for the MBUAPCD Certificates and was determined to be the winning bidder for Certificate Nos. 53a-e. Duke and PG&E signed a Purchase and Sale Agreement (Agreement) dated October 7, 1999. PG&E attached a copy of the Agreement to its Application.

### **Proposed Ratemaking Treatment**

PG&E states that, in compliance with D.97-11-074, it proposes to book the net gain on sale from the ERCs to the Competition Transition Charge Revenue Section of the Transition Cost Balancing Account thereby benefiting the PG&E ratepayers. The ERCs were acquired by PG&E for a nominal filing fee with

MBUAPCD and have no book value. The ERCs were never recorded in rate base, therefore, the revenue requirement is zero and there is no change in rate base from the sale.

### **Concerns of Ratepayer Advocates**

ORA has reviewed PG&E's Application and the unredacted exhibits containing the proposed sales price. ORA is satisfied that the auction process used was fair and reasonable because the ERCs were available to all interested parties since PG&E sent the request for bid proposals to potential bidders and announced the auction through various media services. In addition, PG&E provided auction protocols that prevented any bidder from controlling a significant amount of the Bay Area ERCs. PG&E then received the bids and selected the combination of bids that yielded the highest overall proceeds. ORA is satisfied that the proposed buyer, Duke, appears qualified to participate in the auction and to purchase the ERCs.

### **No Environmental Impact**

The proposed sale is exempt from the requirements of the California Environmental Quality Act (CEQA) because the sale will not result in a direct or reasonably foreseeable indirect physical change in the environment. (CEQA Guidelines §§ 15060(c)(2), 15061(b)(3).) Duke wishes to purchase the ERCs to use solely as emission offsets for new or modified facilities that generate electricity. Such new or modified facilities may include electrical generating facilities, electric cogeneration facilities, and resource waste recovery electrical generation facilities. Any increase in criteria air pollutant emissions in the affected air basins for which the ERCs may be used by Duke for new or modified generation projects would occur under air quality permits and would be consistent with emissions limitations and standards within the air basin in which they were

issued. Therefore, we are satisfied that no further environmental review by the Commission is required.

**Conclusion**

The Application is in order. We conclude that the Purchase and Sales Agreement is in the public interest and benefits the applicants and ratepayers. Furthermore, we are satisfied that the auction process was fair and reasonable. Accordingly, we grant the relief requested and exercise our authority under Pub. Util. Code § 851.

In addition, we approve the PG&E's proposal to book the net gain on sale from the ERCs to the Competition Transition Charge Revenue Section of the Transition Cost Balancing Account and find that the fair market value of the ERCs is the winning auction price.

**Findings of Fact**

1. PG&E is an electric utility subject to the jurisdiction of the Commission.
2. Notice of the filing of the Application appeared in the Daily Calendar on November 4, 1999. No protests were filed.
3. Duke was the winning bidder for the MBUAPCD Certificate Nos. 53a-e.
4. PG&E acquired the ERCs for a nominal filing fee, so they were never recorded in rate base.
5. PG&E and Duke have entered into a Purchase and Sale Agreement, dated October 7, 1999, for the transfer of the ERCs.
6. The fair market value of the ERCS is the price resulting from the auction process.
7. The gain on sale of the ERCS shall be credited to offset transition cost recovery.

8. ORA has reviewed the Purchase and Sale Agreement and has no objection to the proposed transfer of the PG&E ERCs to Duke.

**Conclusions of Law**

1. No public hearing is necessary.
2. The purchase and sale of ERCs is subject to Pub. Util. Code § 851.
3. The purchase and sale of the ERCs does not require CEQA review by the Commission.
4. The sale and conveyance of the ERCs should be approved.
5. PG&E should be authorized to credit the gain on sale of the ERCs to offset transition cost recovery.
6. This order should be made effective immediately in order that the transactions can be implemented promptly.

**O R D E R**

**IT IS ORDERED** that:

1. Pacific Gas and Electric Company is authorized, pursuant to Pub. Util. Code § 851, to sell to Duke Energy Moss Landing, LLC certain Emission Reduction Credits identified as Monterey Bay Unified Air Pollution Control District Certificate Nos. 53a-e.

A.99-11-006 ALJ/CAB/hkr

2. Application 99-11-006 is closed.

This order is effective today.

Dated April 20, 2000, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

CARL W. WOOD

Commissioners

I will file a concurrence.

/s/ CARL W. WOOD

Commissioner

A.99-11-007, D.00-04-063  
A.99-11-008, D.00-04-064  
A.99-11-006, D.00-04-065

**Concurring Opinion of Commissioner Carl Wood:**

I concur in the decision to approve sale of PG&E's emission offset certificates in this proceeding. The transfer of certificates in this case is intended to facilitate the construction of new generation in the Bay Area, a result that I wholeheartedly support.

The order in this case is silent on an issue that I consider to be of some importance – the potential for limiting competition from new generation in the future in the Bay Area if the owners of both existing generation and emission offsets exercise market power and raise prices for their generation output to the detriment of Bay Area and California consumers. Ownership of these certificates could pose barriers to market entry and construction of new generation that might mitigate such an exercise of market power. I would like to have seen some analysis of this issue in the course of the proceedings at the CPUC, and/or at the CEC, where an authorization for construction has been issued subject to our approval of the transfer in this case. However, it would be irresponsible to delay this transfer at this point while such analysis was performed. I will not do so.

I wish to note, however, that market power in the competitive generation markets remains a concern, particularly in light of the evolving debate over management of transmission congestion in California at the Federal Energy Regulatory Commission. I encourage our Commission to track market power closely, particularly if the Bay Area is designated as a zone for congestion management purposes, and to take whatever measures may be necessary to mitigate it in any forum, including revision of any authorization of market-based rates by the FERC if that would be appropriate.

/S/ Carl Wood

---

**Carl Wood**  
Commissioner

San Francisco, California

April 21, 2000