

Decision 00-06-017 June 8, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC COMPANY (U 39 M), a California corporation, and GARY L. GRANT and CHRIS A. GRANT, ET AL., for an Order Authorizing the Former to Sell and Convey to the Latter a Certain Parcel of Land in San Joaquin County Pursuant to Public Utilities Code Section 851.

Application 99-08-008
(Filed August 5, 1999)

OPINION**I. Procedure**

Pursuant to § 851 of the Pub. Util. Code and the Rules of Practice and Procedure of the Commission, Pacific Gas and Electric Company (PG&E) and Gary L. Grant and Chris A. Grant, et al. (Buyers) request authority for PG&E to sell to Buyers certain parcels of land located in San Joaquin County (the Property), as set forth in the Purchase and Sale Agreements between PG&E and Buyers attached to the application (the Agreements). PG&E and Buyers also request that the Commission defer consideration of the ratemaking treatment associated with this sale to a new application. On September 1, 2000, PG&E will file this new application to propose certain performance-based ratemaking (PBR) standards and to resolve § 851 ratemaking matters.

The Application was filed on August 5, 1999 and was noticed on the Daily Calendar on August 11, 1999. On September 8, 1999, the Office of Ratepayer Advocates (ORA) filed a response to the application. ORA does not oppose a Commission order granting PG&E authority to sell the Property to

the Buyer and supports PG&E's recommendation to defer consideration of the ratemaking treatment associated with this sale to PG&E's PBR proceeding (A.98-11-023).¹ No protests have been received.

In Resolution ALJ 176-3022, dated September 2, 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 176-3022.

II. Applicants

Since October 10, 1905, PG&E has been an operating public utility corporation, organized under the laws of the State of California. PG&E is engaged principally in the business of furnishing gas and electric service in California.

Buyers are the owners of the subdivided lots located on both sides of the Property. Buyers are three groups of adjacent homeowners. The Purchase and Sale Agreement dated May 30, 1997 covers the portion of the Property which lies south of Wawona Street (southerly segment). The Purchase and Sale Agreement dated February 19, 1998 covers the portion of the Property which lies between Parkview Street and Wawona Street (middle segment). The Purchase and Sale Agreement dated July 25, 1997 covers the portion of the strip which lies between Pacific Road and Parkview Street (northerly segment).

¹ On March 30, 2000, PG&E filed a petition in its PBR proceeding to withdraw A.98-11-023, in response to D.00-02-046. PG&E avers that it will file a new application proposing PBR performance standards, the ratemaking associated with the proceeds from sales and transfers of property, and certain other issues. ORA did not oppose PG&E's request in A.98-11-023.

III. The Property

The Property consists of a 2,070-foot long, 20-foot wide, strip of unimproved land located in the City of Manteca in San Joaquin County. PG&E acquired the Property from Beck Development, Inc. by deed dated December 16, 1985 (recorded on April 2, 1991 as Recorder's Serial Number 91028047, San Joaquin County Records). It is designated as San Joaquin County Assessor's Parcel Numbers 243-510-63, 243-520-57 and 243-530-66 and is approximately 0.95 acre in size.

The Property was acquired in connection with a then-existing PG&E gas pipe line. However, that pipe line was abandoned in 1990 and replaced with a gas pipe line in another location. The abandoned pipe line was physically removed from the Property in April 1977. Therefore, the Property is no longer needed for gas pipe line purposes. However, the Property contains an electric distribution pole line.

The total original cost of the Property is \$2,000. This cost was equally distributed among the three segments resulting in a book value of \$667 for each of the segments of the Property.

IV. Reasons for Sale of the Property

Since PG&E's acquisition of the Property, the land on both sides of it has been subdivided. In addition, two city streets (Wawona Street and Parkview Street) have been constructed across the Property which have divided the Property into three separate parcels. Since the creation of the subdivisions, trespassers onto the Property have created a maintenance problem for PG&E and a vandalism problem for the adjacent homeowners.

In response to Buyers' inquiry about purchasing the Property, the Property was identified by PG&E as a candidate for disposition. Aside from the pole line which is located on the Property, PG&E does not otherwise make use of the

Property. With adequate easements for the electric distribution pole line lying within the Property, it is not foreseeable that the Property will ever again be useful for public utility purposes. Based on this analysis, PG&E 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. PG&E also concluded that, by exchanging unused fee interests for easements and by removing the book value of the fee interests from rate base, PG&E would be able to maintain customers service at a reduced cost.

Moreover, PG&E concluded that the easements will actually be more advantageous to PG&E and its ratepayers than continuing to own the Property. In particular, with easements, PG&E would retain all rights necessary for current maintenance and future operation of the existing facilities, including the right to enter on any part of the Property for maintenance purposes, with none of the obligations attendant to ownership of the Property. Specifically, PG&E would no longer be responsible for the maintenance costs or the 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 or acts of vandalism caused by trespassers onto the Property.

Buyers wish to purchase the Property to incorporate into the adjacent subdivision lots and thereby eliminate the vandalism problem.

V. The Agreements

The terms and conditions of the proposed sale are contained in the Purchase and Sale Agreements between PG&E and Buyers. Under the terms of the Agreements, PG&E will sell and convey to Buyers the Property, together with all easements, rights and privileges appurtenant thereto.

The purchase price of the Property is \$9,000, \$3,000 for each segment.

The land on both sides of the Property has been subdivided since PG&E acquired the strip. The highest and best use of the Property is as plottage to the adjoining lots, and Buyers will use the Property for that purpose. Each group of buyers are purchasing the Property as a group and will bear the cost of dividing the Property so that the group as a whole can eventually deed the Property to the individual members of the group. PG&E's involvement in the transaction will end upon transfer of the Property to each group.

Each segment of the Property is estimated to have an aggregate value of approximately \$4,000 if the Property were subdivided and then sold to the individual buyers rather than the group as a whole. This would be the total estimated increase in value of the individual adjacent lots in each segment of the Property created by the addition of the Property to them. However, since PG&E has asked Buyers to take whatever steps may be required by the local agencies to complete the subdivision of the Property among themselves, and also to bear the costs associated therewith, the property rights conveyed in this transaction are estimated to have a value of something less than the full subdivided aggregate value. PG&E and Buyers agreed to a value of \$3,000 for each segment.

Concurrently with entering into the Agreements with Buyers, PG&E granted the buyers in the northerly and southerly segments written permission to enter upon the Property for purposes of relocating the existing fences from the border of the Property to the proposed new boundary lines of the expanded lots. This allows Buyers to incorporate the Property into the adjacent lots and thereby eliminate the strip. The elimination of the strip eliminates the vandalism problems caused by those that trespass onto the Property. However, PG&E retains the right to have the fences moved off the Property should the sale not receive Commission approval.

According to the Agreements, the closing period for the transaction is 30 days from the date PG&E receives final approval for the sale from the Commission pursuant to § 851.

VI. Compliance with PG&E-ORA Agreement

The following information is provided pursuant to PG&E's agreement with ORA to include certain information in its Section 851 applications.

A. Table Showing Sales Price, Expenses, Tax Effects

A table showing the sales price, expenses, and tax effects is appended to the application as Exhibits L, M and N.

B. Decrease in Rate Base Resulting From the Sale

The Property consists of non-depreciable assets. Exhibits I, J and K show the 1999 revenue requirements associated with the Property.

Exhibit I shows the 1999 revenue requirements associated with the southerly segment of the Property. Based on property taxes of \$96, annual maintenance costs of \$1,000, and PG&E's 1999 authorized cost of capital, the 1999 revenue requirement, including taxes, franchise fees and an allowance for uncollectibles, is \$1,194.

Exhibit J shows the 1999 revenue requirement associated with the middle segment of the Property. Based on property taxes of \$113, annual maintenance costs of \$1,000, and PG&E's 1999 authorized cost of capital, the 1999 revenue requirement, including taxes, franchise fees and an allowance for uncollectibles, is \$1,211.

Exhibit K shows the 1999 revenue requirement associated with the northerly segment of the Property. Based on property taxes of \$106, annual maintenance costs of \$1,000, and PG&E's 1999 authorized cost of capital, the 1999

revenue requirement, including taxes, franchise fees and an allowance for uncollectibles, is \$1,204.

The costs related to the Property (all three segments) are recovered through base rates as determined in a General Rate Case (GRC).

Because the revenue requirement determined in a GRC is authorized at an aggregate level, it is impossible to specifically identify these costs in a GRC decision. Nevertheless, these costs are presently included in rates since they are embedded in PG&E's adopted rate base and operation and maintenance expense estimates. Therefore, in this case, the Property's \$3,609 revenue requirement is included in the GRC revenues ordered by D.00-02-046 (PG&E's 1999 Test Year decision).

C. Explanation of Other Accounting/Ratemaking Features

The gross sales proceeds from this sale are reduced by \$2,500 in disposition costs for the Property. This is the amount spent for an outside consultant to determine the aggregate value of the Property.

VII. Ratemaking Treatment

Applicants and ORA request that the Commission defer consideration of the ratemaking treatment for this sale to a new application which PG&E will file to resolve this and other § 851 ratemaking matters upon Commission approval of its withdrawal of A.98-11-023, PG&E's PBR proceeding. The Commission has approved this approach in D.99-12-030, D.99-12-019, and D.99-10-001.

The Commission also ordered PG&E to establish a memorandum account to track net-of-tax proceeds resulting from these sales. The memorandum account accrues interest at the three-month commercial paper rate until the ratemaking issues are fully resolved in the context of PBR. Thus, neither ratepayers nor shareholders are harmed by this delay. It is reasonable to

continue this approach in the instant proceeding. We wish to consider the allocation of the gain from the sale of and assets in a larger context, recognizing the PBR requirements of D.00-02-046 and the restrictions on transition cost recovery described in D.99-02-033.²

VIII. Environmental Matters

The proposed sale is not an activity subject to the California Environmental Quality Act (CEQA) because it will not result in a direct or reasonably foreseeable indirect physical change in the environment. (CEQA Guidelines §§ 15060(c)(2), 15061(b)(3).)

The proposed sale will not cause any changes to the environment because Buyers do not propose any change in use of the Property. As described above, the Property was historically used by PG&E for very limited public utility purposes. Neither PG&E nor Buyers seek authority from the Commission to change the existing uses of the Property other than to incorporate it into the adjacent lots. Accordingly, there is no substantial evidence of any direct or indirect change to the environment as a result of the proposed sale, and, therefore, CEQA review is not required. (CEQA Guidelines §§ 15060(c)(2), 15061(b)(3).)

IX. Service

In D.99-04-015 and D.99-04-022 (Ordering Paragraph 7), the Commission directed PG&E to serve "any future Public Utilities Code Section 851 applications regarding land and/or hydroelectric facilities on local jurisdictions, such as cities, counties, special use districts, and federal and state resource agencies." In

² In D.99-02-033, the Commission rejected PG&E's proposal to flow these transactions through the Transition Cost Balancing Account (TCBA) when the net result is a loss.

compliance with this order, PG&E properly served this application on the following entities:

- City of Manteca, City Manager
- County of San Joaquin, County Administrative Officer
- California Public Utilities Commission, Office of Ratepayer Advocates
- California Public Utilities Commission, Energy Division
- California Resources Agency
- California Environmental Protection Agency
- United States Environmental Protection Agency
- United States Department of the Interior

X. Public Review

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.

XI. Conclusion

With the easements described herein, PG&E will not need the property at issue for public utility purposes. We find that the sale and transfer is in the public interest because it solves a maintenance problem for PG&E and a vandalism problem for adjacent homeowners.

Findings of Fact

1. PG&E and Buyers request authority, pursuant to § 851, for PG&E to sell and transfer a .95 acre parcel of land located in the City of Manteca, San Joaquin County.
2. The land is no longer required for utility purposes except for an electric distribution pole line.

3. The proposed sale agreement reserves an easement for the electric distribution pole line to PG&E.

4. It is reasonable to defer consideration of the ratemaking issues to a new application, which PG&E will file on September 1, 2000.

Conclusions of Law

1. A public hearing is not necessary.

2. The proposed sale as set forth in the application is in the public interest and should be approved.

3. This order should be effective today so that the sale may proceed expeditiously.

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 to Buyers the property set forth in Application (A.) 99-08-008, in accordance with the Purchase and Sale Agreements attached to the application.

2. Within 10 days of the actual transfer, PG&E shall notify the Directors of both the Energy Division and the 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.

4. Consideration of the ratemaking issues presented in this proceeding is deferred to a new application, which PG&E will file no later than September 1,

A.99-08-008 ALJ/WRI/sid *

2000. PG&E shall establish a memorandum account to track net-of-tax proceeds from this sale.

5. A.99-08-008 is closed.

This order is effective today.

Dated June 8, 2000, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

CARL W. WOOD

Commissioners