

Decision 99-02-066 February 18, 1999

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

Application of Pacific Gas and Electric Company (U 39 M) and Elk Corporation for an Order Under Section 851 of the California Public Utilities Code to Sell and Convey Certain Electric Distribution Facilities. (U 39 M)

Application 98-10-033  
(Filed October 22, 1998)

**O P I N I O N**

**Summary**

We approve the sale by Pacific Gas and Electric Company (PG&E or applicant) of certain electric distribution facilities located at the facility of Elk Corporation (Buyer) in Kern County, California, as described in the application (the Property) to Buyer, and the ratemaking treatment requested by applicant for this transfer.

**Procedural Background**

Applicant is a public utility subject to the jurisdiction of the Commission. On October 22, 1998, PG&E filed an application for authority to transfer the Property to Buyer, which plans to operate the Property to distribute electricity for its own use on its own property.

Notice of the application was published in the Commission's Daily Calendar on October 27, 1998. In Resolution ALJ 176-3003 dated November 5, 1998, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. The Office of Ratepayer Advocates (ORA) filed a response on November 19, 1998 and recommended that the sale be approved,

subject to a condition that the net-of-tax proceeds be credited to the depreciation reserve by a specified date. Given this status, public hearing is not necessary and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-3003.

### **Discussion**

PG&E seeks a Commission finding that the proposed sale on the terms and conditions specified in the Purchase and Sale Agreement (Agreement) dated September 11, 1998 between PG&E and Buyer is in the public interest. PG&E further requests that it be relieved of public utility duties and responsibilities associated with the facilities concurrent with the transfer of ownership to Buyer.

No public utility may transfer its property which is necessary or useful in the performance of its duties to the public without first having secured the Commission's authorization. (Public Utilities (Pub. Util.) Code § 851.) The Property is presently used for electric distribution provided by applicant to Buyer. Thus, the Property is useful, and Pub. Util. Code § 851 applies.

The Property consists of electric distribution facilities located on Buyer's property at 6200 Zerker Road, Shafter, California. Buyer wishes to purchase the Property in order to obtain service under tariff Schedule E-20P, which has a lower rate than tariff Schedule E-20S under which Buyer now obtains service from PG&E.

PG&E wishes to sell the Property because the sale price is greater than replacement cost new less depreciation, which is a fair offer, in its view. The purchase price is \$47,572 excluding any sales or use taxes legally due, which are the responsibility of Buyer. Ad valorem taxes for the tax year in which the Property is conveyed will be prorated from the date of conveyance, with Buyer to pay PG&E that portion attributable to the portion of the tax year from and after conveyance of the facilities.

Buyer is responsible for any permits that may be required that were not required of PG&E because of its status as a public utility. PG&E provides no warranty of the Property except that it is as described in the Agreement.

Buyer acknowledges that the facilities on the Property may contain polychlorinated biphenyls (PCBs) and that Buyer is responsible for handling PCBs on the Property in compliance with all applicable laws and regulations. Buyer indemnifies PG&E against all claims associated with the Property after the transfer is accomplished, including those resulting from environmental contamination.

The original cost of the Property was \$44,893, and the net book value is \$40,565. The sale will result in net-of-tax proceeds of \$42,577 which will benefit ratepayers since the rate base will be reduced by that amount. ORA recommends that the Commission specifically order when the rate base reduction will be done. We will order that PG&E reflect this reduction within six months of the effective date of this decision by filing an information only advice letter with the necessary workpapers with the Energy Division of the Commission.

Under the California Environmental Quality Act (CEQA) we must consider the environmental consequences of projects, as defined, that are subject to our discretionary approval. (Public Resources Code Section 21080.) While transfers of utility assets are generally projects subject to CEQA review by the Commission, the facts of this case indicate that this sale, while a project, is not subject to CEQA. Based upon the record, this sale does not have the potential for causing a significant effect on the environment, and accordingly the Commission need not perform CEQA review. (CEQA Guideline 15061(b)(3)).

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. Applicant is a public utility subject to the jurisdiction of the Commission.
2. Applicant has agreed to sell the Property to Buyer under the terms of the Agreement.
3. Ratepayers will benefit from reduced rate base from the transfer of the property.
4. The Agreement contains an indemnification from Buyer to applicant for environmental liabilities arising from the post-transfer discharge of hazardous substances.

### **Conclusions of Law**

1. Transfer of the Property is subject to Pub. Util. Code § 851.
2. Transfer of the Property to Buyer is not subject to CEQA review by the Commission.
3. Transfer of the Property should be approved.
4. Applicant should be relieved of public utility duties and responsibilities associated with the Property.
5. Applicant should promptly reflect the resulting reduction in rate base and notify the Commission by an information only advice letter filing.
6. This proceeding should be closed.

## **O R D E R**

### **IT IS ORDERED that:**

1. Pacific Gas and Electric Company (applicant) may transfer to Elk Corporation the property described in the application, subject to the terms and conditions described therein.

2. Following transfer of the property, applicant shall credit the after-tax proceeds to the depreciation reserve and shall inform the Commission of this action by an advice letter filing within six months of the decision..

3. Applicant shall reflect the resulting reduction of its base in a formal proceeding before the Commission within six months of the effective date of this order.

4. Upon transfer of the property, applicant is relieved of public utility duties and responsibilities associated with the property.

5. The authority granted herein expires if not exercised within 12 months of the effective date of this order.

6. Application 98-10-033 is closed.

This order is effective today.

Dated February 18, 1999, at San Francisco, California.

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