

Decision 99-12-030 December 16, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U 39 M) for an Order Under Section 851 of the California Public Utilities Code to Sell and Convey Certain Limited Sole-Customer Public Utility Facilities. (U 39 M)

Application 99-04-048
(Filed April 30, 1999)

O P I N I O N

Pacific Gas and Electric Company (PG&E) seeks authority to sell and convey certain limited public utility facilities (Facilities) owned, operated, and maintained by PG&E solely to provide electric or gas service to an individual customer (Purchaser). All sales would occur pursuant to the terms and conditions specified in a Purchase and Sale Agreement (Agreement) between PG&E and Purchaser, which Agreement would conform to the standard Purchase and Sale Agreement described below. PG&E proposes to introduce a streamlined process to execute and receive approval for sales of miscellaneous Facilities, thereby saving PG&E and Commission staff resources. PG&E agrees that, prior to transferring any specific Facilities, PG&E would file an advice letter notifying the Commission of the proposed sale, identifying the Purchaser and specific Facilities to be sold, and requesting final approval for the proposed sale. PG&E shall stipulate in each advice letter that such a sale constitutes a change of ownership only, and that no direct or indirect environmental impacts (including cumulative impacts) will occur as a result of the sale of these specific Facilities.

In August 1998, PG&E submitted Application (A.) 98-08-018 seeking approval of 106 sales agreements entered into during the period of 1989 to 1996

for public utility facilities owned, operated, and maintained by PG&E solely to provide electric or gas service to individual customers. In December 1998, PG&E submitted A.99-01-001 seeking approval of 73 additional sales agreements entered into during the period 1985 to 1991. PG&E had not previously sought Commission approval for these sales agreements because, at the time PG&E entered into them, PG&E believed that Pub. Util. Code § 851¹ did not apply. In light of recent Commission decisions, however, PG&E now believes that Commission approval should have been obtained for the sales agreements and, accordingly, PG&E filed the two applications. These applications were approved in Decision (D.) 99-02-062 and D.99-04-047, respectively.

Since filing the two applications, PG&E has continued to receive requests from its customers to purchase specific public utility facilities owned, operated, and maintained by PG&E solely to provide electric or gas service to such customers. In most cases, customers wish to purchase PG&E's facilities in order to take advantage of the lower rate options available pursuant to PG&E's Commission-approved tariffs.² In other cases, energy service providers (ESPs) may wish to purchase PG&E's existing electric meters (rather than purchasing and installing new meters) to provide direct access service to customers formerly served by PG&E. And in yet other cases, customers may wish to purchase miscellaneous equipment (such as gas meters and gas pipe) for their own

¹ All references are to the Public Utilities Code, unless otherwise noted.

² Under PG&E's electric tariffs, for example, customers with a maximum demand between 500 and 4,000 kilowatts are eligible to receive primary distribution service. Customers with a maximum demand below that range are eligible to receive secondary distribution service. In order to qualify for the lower rate associated with primary distribution service, customers have to construct or purchase facilities necessary to receive service at the applicable voltage level.

convenience. By this application, PG&E seeks approval to sell such facilities (whose purchase price per sale would be limited to a cap of \$250,000) to customers who elect to purchase PG&E's facilities in lieu of constructing or purchasing similar facilities on their own.

As a general matter, customers or third parties considering potential purchases of PG&E's facilities wish to complete such purchases in a relatively short time period. PG&E's experience has shown that it may take anywhere from four months to over a year to obtain Section 851 approval for the types of sales described above. By this application, PG&E hopes to expedite the Section 851 approval process for these sales.

In addition to saving time, approval of this application will enable PG&E, potential purchasers, and the Commission to save resources associated with the Pub. Util. Code § 851 application process. Each proposed sale under this application will be governed by a Purchase and Sale Agreement identical in form to the standard Purchase and Sale Agreement attached to the application; the ratemaking for each proposed sale will be identical. If PG&E were to file an individual, Pub. Util. Code § 851 application for each proposed sale, such applications would be identical except for certain items (the name of the purchaser, the date of the purchase and sale agreement, the actual purchase price, net book cost and original cost).

The authority granted will apply only to Facilities whose purchase price does not exceed a certain maximum level. PG&E proposes that the maximum purchase price for sales under this streamlined process be \$250,000. PG&E believes that this proposed maximum appropriately balances the goals of streamlining the Pub. Util. Code § 851 approval process for relatively modest sales while retaining the full Pub. Util. Code § 851 approval process for larger sales. In addition, PG&E proposes to file an advice letter after entering into a

Purchase and Sale Agreement but prior to transferring specific Facilities. In the advice letter,³ PG&E would include the following information:

- the legal name and location of the Purchaser;
- character of business performed by Purchaser;
- identification of the Facilities to be sold;
- original cost and net book value of the Facilities;
- purchase price for the Facilities;
- signed Purchase and Sale Agreement; and
- table showing sales price, expenses, and tax effects.

PG&E also agrees to serve the Energy Division and Office of Ratepayer Advocates (ORA) with a copy of each advice letter for sales entered into pursuant to this application, and to file with the Energy Division and ORA, on an annual basis, a report listing any and all sales entered into and approved by the Commission pursuant to the advice letter procedures described herein.

By this application, PG&E seeks authorization to sell the following types of public utility facilities: electric distribution equipment (including conductors, poles, switches, connection hardware, and transformers), gas and electric metering equipment, and gas service piping. A description of the specific Facilities to be sold to each Purchaser will be provided by PG&E in the advice letter. In each case, the Facilities will be sold "as is," with no warranty. For each proposed sale, the net book cost and original cost of the Facilities will be provided by PG&E in the advice letter. Rather than incurring the costs of removing the facilities and trying to find alternate uses for the surplus facilities, PG&E believes it is in the ratepayers' interest to sell the facilities at a price equal

³ In addition to including the information identified in this application, any advice letter filed pursuant to this application would also conform to any requirements that may be established in the ongoing General Order 96-A Rulemaking (R.98-07-038).

to or greater than replacement cost new less depreciation (RCNLD). In all cases, the purchase price will be greater than or equal to RCNLD, and the terms for payment will be as specified in the standard Purchase and Sale Agreement.

PG&E agreed with the ORA that in any Pub. Util. Code § 851 application for the sale of utility property, it would provide the following information:

- A table showing the sale price less the original cost (less depreciation), less expenses associated with the sale, and tax effects associated with the sale;
- A calculation of the decrease in rate base resulting from the sale;
- As needed, an explanation of other accounting/ratemaking features such as depreciation methodologies and deferred credits;
- A copy of any easement or other agreement pertinent to the sale;
- A brief description of the impacts (if any) of the proposed sale on electric restructuring, renewables, and air emission;
- As needed, a copy of environmental/hazardous waste reports; and
- Detailed labeling of analyses and computations.

For each proposed sale, a table showing sales price, expenses, and tax effects (substantially in the format shown in the Standard Table Showing Sales Price, Expenses, Tax Effect, attached to the Application as Attachment C) will be provided by PG&E in the advice letter filing. For each proposed sale, PG&E's rate base will be reduced by the net-of-tax proceeds which will be credited to the depreciation reserve.

Since the RCNLD is the benchmark against which the sales price is assessed, we will require PG&E to also include the RCNLD for the Facilities and all associated workpapers supporting the RCNLD calculation with the advice letter filing.

There is no special accounting or ratemaking treatment requested for these sales. Consistent with the traditional treatment of gains of sales of miscellaneous depreciable assets, PG&E proposes to give ratepayers the benefit of the after-tax gain of the sale. As described above, this is accomplished by crediting the

after-tax proceeds of the sale to the depreciation reserve, thus reducing rate base, and thereby giving the benefit of the sale to ratepayers.⁴ Any easements or other agreements pertinent to each sale will be included in the advice letter for such sale.

The proposed sales will have no significant impact on electric restructuring, renewables, or air emissions. Any environmental or hazardous waste report pertinent to each sale will be included in the advice letter for such sale.

As described above, for each proposed sale, Purchaser will pay PG&E a price greater than or equal to RCNLD for the Facilities. We have previously approved PG&E's applications for similar sales of equipment under the same terms and conditions and at the same price (greater than or equal to RCNLD). See e.g., Pacific Gas and Electric Company, D.98-02-026, D.98-03-024, and D.98-03-029 (approving streetlight sales agreements); D.98-07-066 (approving electric distribution equipment sale agreement). The proposed sales streamlined methodology is reasonable and should be approved.

ORA and Modesto Irrigation District (MID) filed responses to the application supporting it, but requesting clarification. ORA requests the Commission to "re-examine the ratemaking treatment for this category of sales in the context of PG&E's current pending PBR proceeding." (ORA Response, p. 4.) PG&E does not object to this request. It will be granted. MID requests that the

⁴ The ratemaking proposed in this application will be subject to any modifications subsequently approved by the Commission, for example, in PG&E's Performance-Based Ratemaking proceeding (A.98-11-023).

Commission grant PG&E authority to use the expedited review process for sales of facilities (whose purchase price per sale would not exceed \$250,000) to distribution service providers. (MID Response, pp. 2-3.) PG&E does not object to this request. It will be granted.

California Environmental Quality Act (CEQA)

The advice letter process outlined in this decision is strictly limited in its applicability to the sale of certain limited public utility Facilities owned, operated, and maintained by PG&E solely to provide electric or gas service to an individual customer.

Prior to transferring any specific Facilities, PG&E shall file an advice letter notifying the Commission of the proposed sale: identifying the Purchaser and specific Facilities to be sold; requesting final approval for the proposed sale; and stipulating in each advice letter that such a sale constitutes a change of ownership only, and that no direct or indirect environmental impacts (including cumulative impacts) will occur as a result of the sale of these specific Facilities. We note that such stipulation will be subject to the Commission's Rules of Practice and Procedure, and the Commission may order PG&E to provide documentation for such stipulation.

The Commission staff has determined that the activity encompassed by PG&E's instant application is a project subject to the CEQA. Notwithstanding that determination, the limited circumstances under which PG&E may use the advice letter process outlined in this decision will ensure that the process and activities contemplated by the Commission in this decision can be seen with certainty to have no possibility of having a potential significant effect on the environment. Therefore, pursuant to Section 15061(b)(3) of the CEQA Guidelines, the advice letter process promulgated by this decision is exempt from further action under CEQA. PG&E is on notice that advice letters which do

not comply with the process contemplated by this decision will be rejected and PG&E may refile those projects as applications subject to Pub. Util. Code § 851; such applications will be subject to CEQA pursuant to Section 15061(a) of the CEQA Guidelines.

In Resolution ALJ 176-3015, dated May 13, 1999, the Commission preliminary categorized this application as ratesetting, and preliminarily determined that hearings were necessary. There are no issues of disputed fact to consider in this proceeding; therefore, hearings are not required.

Comments On Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code Section (311(g) and Rule 77.1 of the Rules of Practice and Procedure. PG&E, ORA, and MID filed comments on November 30, 1999. Each of these parties supports the draft decision. No reply comments were filed.

Findings of Fact

1. It is in the public interest that customers of PG&E and/or third parties (including distribution service providers) who wish to purchase PG&E facilities of a value of \$250,000 or less and which serve an individual customer have a streamlined process to execute and receive approval for such facilities.

2. The conditions specified in the Purchase and Sale Agreement attached to the application are reasonable.

3. The advice letter process outlined in this decision is strictly limited in its applicability to the sale of certain limited public utility Facilities owned, operated, and maintained by PG&E solely to provide electric or gas service to an individual customer.

4. Pursuant to Section 15061(a) of the CEQA Guidelines, the Commission staff has determined that the activity encompassed by PG&E's instant application is a project subject to the CEQA.

5. Pursuant to Section 15061(b)(3) of the CEQA Guidelines, the advice letter process promulgated by this decision is exempt from further action under CEQA.

6. Advice letter filings which do not meet the strict limitations imposed by this decision will be rejected in favor of applications subject to Pub. Util. Code § 851; such applications will be subject to CEQA pursuant to Section 15061(a) of the CEQA Guidelines.

Conclusions of Law

1. PG&E should be authorized to sell and convey the Facilities hereinabove described and to perform in accordance with the terms of the standard Purchase and Sale Agreement attached to its application, subject to the above-referenced advice letter procedures.

2. PG&E should be relieved of the public utility duties and responsibilities of owning, operating, and maintaining the Facilities concurrently with the transfer of ownership of the Facilities to a Purchaser.

3. The accounting and ratemaking treatment proposed herein are approved, subject to: a) PG&E's filing with the Commission an advice letter with the final cost figures for the Facilities; and b) their re-examination in PG&E's current PBR proceeding.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) is authorized to sell and convey sole-customer facilities of a value of \$250,000 or less, using a standard form contract. All sales shall occur pursuant to the terms of the standard Purchase and Sale Agreement attached to PG&E's application, subject to the above-referenced advice letter procedures.

2. PG&E shall be relieved of the public utility duties and responsibilities of owning, operating, and maintaining such facilities concurrently with the transfer of ownership of the facilities to a purchaser;

3. The accounting and ratemaking treatment proposed herein are approved, subject to: a) PG&E's filing with the Commission an advice letter with the final cost figures for the facilities; and b) their re-examination in PG&E's current performance-based ratemaking proceeding Application 98-11-023.

4. This proceeding is closed.

This order is effective today.

Dated December 16, 1999, at San Francisco, California.

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