

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-3501
OCTOBER 9, 1997

R E S O L U T I O N

RESOLUTION E-3501. REQUEST OF CATELLUS DEVELOPMENT CORPORATION (CATELLUS) FOR A SPECIAL RULING UNDER THE EXCEPTIONAL CASES PROVISION OF ELECTRIC TARIFF RULE 16 THAT A PROVISION BE ADDED TO THE EXTENSION AND SERVICE AGREEMENT BETWEEN CATELLUS AND PACIFIC GAS AND ELECTRIC COMPANY TO PRESERVE AN OPTION ALLOWING CATELLUS TO ACQUIRE OWNERSHIP OF THE DISTRIBUTION FACILITIES AT SOME FUTURE TIME UNDER CERTAIN SPECIFIED CONDITIONS. DENIED WITHOUT PREJUDICE.

BY LETTER, DATED JULY 10, 1997

SUMMARY

1. Catellus Development Corporation (Catellus) has requested a special ruling that a provision be added to an extension and service agreement between Catellus and Pacific Gas and Electric Company (PG&E) to preserve an option allowing Catellus to acquire ownership of the distribution facilities at some future time.
2. PG&E protested Catellus' request citing procedural concerns about Catellus' not using more formal procedures and Catellus' lack of justification for its request among other items.
3. Catellus' request is denied without prejudice. Catellus may renew its request when the Commission considers an evaluation of the regulated structure of the electric distribution system.

BACKGROUND

1. On July 10, 1997, Catellus Development Corporation (Catellus), requested by letter a special ruling under the provision entitled "Exceptional Cases" in Pacific Gas and Electric Company's (PG&E) Electric Tariff Rule 16G for service extensions.
2. Catellus has been working with PG&E to begin the design of electric and gas distribution facilities for two development projects located at Automall and Cushing Parkway South in Fremont, California. Prior to making a formal request for engineering plans, Catellus met with PG&E representatives on June 4, 1997, to discuss Catellus' desire to reserve the option to acquire these distribution facilities if that became feasible in a restructured electric industry. As a result of that

meeting and discussions with PG&E legal counsel, Catellus alleges that PG&E has taken the position that Catellus cannot be granted an option to acquire the distribution facilities. Catellus further alleges that PG&E would not begin preparation of engineering plans or hold Catellus' place in line for such preparation unless Catellus signed an "Installation Selection Option" which specifically incorporates by reference terms which provide for PG&E ownership of the facilities.

3. Catellus made two \$5,000 deposits for the preparation of engineering plans for each development pursuant to the terms of the letter agreement received from PG&E. Copies of the letter agreement and Catellus' transmittal letter were attached to Catellus' July 10, 1997 request. There is no provision in the letter that requires that applicant sign an "Installation Selection Option" before engineering plans can be prepared. Catellus alleges that PG&E continued to take the position that Catellus must sign an "Installation Selection Option" form in order for PG&E engineers to begin the design preparation. A copy of PG&E's letter dated June 23, 1997 so stating, was also attached to Catellus' July 10, 1997 request.

4. Catellus states that given the choice between indefinitely delaying construction and signing the "Installation Selection Option," Catellus had no alternative but to sign it (also attached to the July 10, 1997 request).

5. Catellus' request for special ruling is made pursuant to PG&E Electric Rule 16G which provides as follows:

When the application of this rule appears impractical or unjust to either party, or ratepayers, PG&E or Applicant may refer the matter to the Commission for a special ruling or for approval of special conditions which may be mutually agreed upon.

6. Catellus claims authority for this rule in Decision D.94-12-026 and PG&E Advice Letter No. 1504-E-A. Catellus submits that this situation presents an exceptional case requiring a special ruling by the Commission.

7. Catellus also claims authority for its request that it be given the option to acquire the distribution facilities at some future time in Public Utilities Code (PU Code) Section 369, as confirmed by D.97-06-060. Section 369 recognizes that after January 1, 1998 there will be customers that do not "require the use of transmission or distribution facilities owned by the utility." In D.97-06-060, the Commission defined "customers that obtain all or part of their energy and delivery services from a provider other than the jurisdictional utility" as "departing load customers." (D.97-06-060, slip opinion, p. 62)

8. Catellus requests a special ruling from the Commission that a provision be added to the Extension and Service Agreement between Catellus and PG&E to preserve an option allowing Catellus to acquire ownership of the distribution facilities at some future time, as follows:

Notwithstanding any other provision of this Agreement, and subject to obtaining the necessary approval of the Commission and compliance with all Commission Rules and Orders, if during the term of this Agreement Applicant desires to reacquire ownership of the electric facilities installed under this Agreement and conveyed to PG&E, and serves PG&E with written notice of such election to reacquire the electric facilities, PG&E and Applicant agree that:

- a. Applicant shall have the right to acquire the electric facilities upon obtaining the necessary approvals of the Commission, the County of Alameda, the City of Fremont, and any other governmental body.
- b. PG&E and Applicant shall seek within 45 days of such notice by Applicant the necessary regulatory approvals for such transfer.
- c. As consideration for such acquisition, Applicant shall pay to PG&E the total of the engineering costs incurred by PG&E and not reimbursed by Applicant and the amount of any refund received by Applicant from PG&E, without interest, less depreciation claimed on these assets.
- d. Upon obtaining the necessary regulatory and/or governmental approvals and payment of the amounts set forth above, PG&E shall reconvey title and ownership of the electric facilities to Applicant; and
- e. PG&E shall cooperate with and assist Applicant in obtaining the necessary rights of way, easements, land leases or permits, whether by transfer or by acquisition to allow Applicant to own and maintain the electric distribution system so acquired.

9. Catellus requests expedited consideration of its request.

NOTICE

1. Notice of this letter was provided by publication in the Commission Calendar on July 30, 1997 and by notification to PG&E on July 10, 1997.

PROTESTS

1. Energy Division requested that PG&E respond to Catellus' letter of July 10, 1997. On August 18, 1997, PG&E responded to Catellus' letter.

2. PG&E argues that Catellus request be denied. PG&E alleges several defects:

- Catellus should file an application for a certificate of public convenience and necessity under PUCODE Section 1001 if it wants to own and operate an electric distribution system.
- The legal prerequisites of PUCODE Section 783 regarding line extensions have not been observed.
- Catellus has not met its burden in showing an economic justification for why the line extension rules should be altered.
- Catellus' proposal does not take into consideration how electric systems are designed for safety and reliability.
- Catellus is attempting to set a value on PG&E's utility property today for a takeover that may occur at some indeterminate time in the future without consideration of fair compensation.
- Catellus should refer to the Commission's open Rulemaking (R.) 92-03-050 if it wishes to change the line extension rules.

3. In addition, PG&E seeks to clarify three matters raised in Catellus' letter. First, PG&E asserts that the reason it did not inform Catellus that the "Installation Selection Option" needed to be signed before the engineering plans could be prepared in its May 21 letter was that PG&E previously made this requirement known on May 15. Second, PG&E alleges that Catellus has ignored the May 15 letter in its correspondence with the Commission. Finally, PG&E points out that service extensions are not covered by Tariff Rule 16, but are the subject of Tariff Rule 15.

DISCUSSION

1. The ultimate issue in this Resolution is whether the line extension rules are impractical or unjust as they are

applied to Catellus in that a provision be added to the Extension Service Agreement between Catellus and PG&E to preserve an option allowing Catellus to acquire ownership of the distribution facilities at some future time.

2. Catellus cites authority for its request in PUCode Section 369. This code section does talk of customers that do not "require the use of transmission or distribution facilities owned by the utility." Catellus does not provide a nexus between PUCode Section 369 and its request. PUCode Section 369 does not talk of transfer of ownership or options to acquire ownership of utility property by customers. Moreover, Catellus does not provide any factual information why the application of the Tariff Rule is either impractical or unjust. Since these two reasons are sufficient to deny Catellus' request, we will not address the other objections of PG&E.

3. Catellus's request does raise an interesting issue, however. Should the line extension rules be revised in light of PUCode Section 369? This question is beyond the scope of Catellus' letter request. Catellus may renew its request for an option to purchase the distribution system described above when the Commission considers an evaluation of the regulated structure of the electric distribution system.

4. PG&E points out that service extensions are not covered by Tariff Rule 16, but are the subject of Tariff Rule 15. Service Extensions are covered by Tariff Rule 16; Tariff Rule 15 covers Distribution Line Extensions.

5. Catellus' request should be denied without prejudice.

FINDINGS

1. On July 10, 1997, Catellus Development Corporation (Catellus) requested by letter a special ruling under the provision entitled "Exceptional Cases" in Pacific Gas and Electric Company's (PG&E) Electric Rule 16G for service extensions.

2. Catellus requests a special ruling from the Commission that a provision be added to the Extension and Service Agreement between Catellus and PG&E to preserve an option allowing Catellus to acquire ownership of the distribution facilities at some future time.

3. Catellus has been working with PG&E to begin the design of electric and gas distribution facilities for two development projects located at Automall and Cushing Parkway South in Fremont, California.

4. Catellus desires to reserve the option to acquire these distribution facilities if that became feasible in a restructured electric industry.

5. PG&E takes the position that Catellus must sign an "Installation Selection Option" form in order for PG&E engineers to begin the design preparation.

6. Catellus claims authority for Electric Rule 16G in Decision D.94-12-026 and PG&E Advice Letter No. 1504-E-A. Catellus submits that this situation presents an exceptional case requiring a special ruling by the Commission.

7. Catellus also claims authority for Catellus' request that it be given the option to acquire the distribution facilities at some future time in PUCode Section 369, as confirmed by D.97-06-060.

8. Catellus requests expedited consideration of its request.

9. PG&E argues that:

- Catellus should file an application for a certificate of public convenience and necessity under Public Utilities Code (PUCode) section 1001 if it wants to own and operate an electric distribution system.
- The legal prerequisites of PUCode Section 783 have not been observed.
- Catellus has not met its burden in showing an economic justification for why the line extension rules should be altered.
- Catellus' proposal does not take into consideration how electric systems are designed for safety and reliability.
- Catellus is attempting to set a value on PG&E's utility property today for a takeover that may occur at some indeterminate time in the future without consideration of fair compensation.
- Catellus should refer to the Commission's open Order Instituting Investigation (R.) 92-03-050 if it wishes to change the line extension rules.

10. PG&E asserts that the reason it did not inform Catellus that the "Installation Selection Option" needed to be signed before the engineering plans could be prepared in its May 21 letter was that PG&E previously made this requirement known on May 15.

11. PG&E alleges that Catellus has ignored the May 15 letter in its correspondence with the Commission.

12. PG&E points out, erroneously, that service extensions are not covered by Tariff Rule 16, but are the subject of Tariff Rule 15.

13. The ultimate issue in this Resolution is whether the line extension rules are impractical or unjust as they are applied to Catellus with regard to its request to add a provision be added to the Extension Service Agreement between Catellus and PG&E to preserve an option allowing Catellus to acquire ownership of the distribution facilities at some future time.

14. Catellus does not provide a nexus between PUCODE 369 and its request.

15. Catellus does not provide any factual information why the application of the Tariff Rule is either impractical or unjust.

16. Catellus may renew its request for an option to purchase the distribution system described above when the Commission considers an evaluation of the regulated structure of the electric distribution system.

17. Catellus' request should be denied without prejudice.

THEREFORE, IT IS ORDERED that:

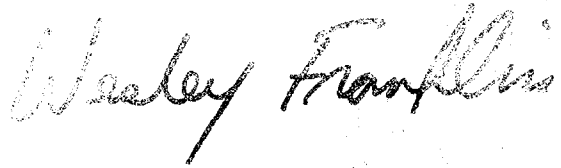
1. Catellus Development Corporation's request for a special ruling under the exceptional cases provision of Electric Tariff Rule 16 that a provision be added to the Extension and Service agreement between Catellus and Pacific Gas and Electric Company to preserve an option allowing Catellus to acquire ownership of the distribution facilities at some future time under certain specified conditions should be denied without prejudice.

2. PG&E's protest regarding Catellus not meeting its burden of showing the application of Electric Tariff Rule 15 is unjust or impractical is granted. Since The Commission is not addressing the other issues raised by PG&E in this Resolution, those protests are denied.

October 9, 1997

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on October 9, 1997. The following Commissioners approved it:



WESLEY FRANKLIN
Executive Director

P. Gregory Conlon, President
Jessie J. Knight, Jr.
Henry M. Duque
Josiah L. Neeper
Richard A. Bilas
Commissioners