STATE OF CALIFORNIA GRAY DAVIS, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

October 15, 2001

TO: PARTIES OF RECORD IN APPLICATION 01-07-007

This is the draft decision of Administrative Law Judge (ALJ) Evans. It will be on the Commission's agenda at the meeting on October 25, 2001. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Pursuant to Rule 77.7(f)(9), comments on the draft decision must be filed within seven days after its mailing. No reply comments will be accepted.

In addition to service by mail, parties should send comments in electronic form to those appearances and the state service list that provided an electronic mail address to the Commission, including ALJ Evans at dje@cpuc.ca.gov. Finally, comments must be served separately on the Assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious methods of service.

/s/ LYNN T. CAREW (by ang)
Lynn T. Carew, Chief
Administrative Law Judge

LTC:jyc

Attachments

Decision **DRAFT DECISION OF ALJ EVANS (Mailed 10/15/01)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company, California corporation (U 39 M) and The De Silva Group L.L.C., a California limited liability company, for an Order Authorizing the Former to Sell and to Convey to the Latter a Certain Parcel of Land in Contra Costa County Pursuant to Public Utilities Code Section 851.	Application 01-07-007 (Filed July 6, 2001)

O P I N I O N

I. Summary

We approve the sale by Pacific Gas and Electric Company (PG&E), applicant, of a 0.92 acre of land located in Contra Costa County to the De Silva Group LLC (De Silva Group) and defer to another proceeding the ratemaking treatment requested by applicant for this sale.

II. Background

PG&E is a public utility subject to the jurisdiction of the Commission. On July 9, 2001, PG&E filed an application for authority to sell and convey a 0.92 acre parcel of land in Contra Costa County to the De Silva Group. Notice of the application appeared in the Daily Calendar on July 13, 2001. The application includes detailed information on original cost of this parcel of land, the accrued depreciation, the effect on rate base and an explanation of the accounting and the ratemaking proposal of PG&E of the gain-on-sale based on the $186,170 sale price.

By Resolution ALJ 176-3068 dated August 2, 2001, the Commission preliminarily categorized this proceeding as ratesetting and determined that hearings were not necessary. The Office of Ratepayer Advocates (ORA) filed a protest on August 10, 2001. A response to ORA's protest was filed on August 10, 2001. PG&E filed a response to ORA's protest on August 30, 2001. There are no disputed material facts and an evidentiary hearing is not necessary. The preliminary determinations made in Resolution ALJ 176-3057 are affirmed.

III. Description of Transaction

As part of PG&E's ongoing efforts to identify under-utilized utility assets the property was identified as a candidate for disposition. The property was acquired in conjunction with the construction of a second electric transmission and a gas transmission line. With adequate easements for the electric lines and the gas line, it is not foreseeable that the property will ever be useful for public utility purposes. Until June 30, 2000, surrounding residents have leased or licensed the property since 1987 to use as parking and/or backyard extensions. PG&E concluded that, by exchanging unused fee interests for easements and by removing the book value of the fee interests from ratebase, it would be able to maintain customer service at a reduced cost.

With easements, PG&E will retain all rights necessary for current maintenance and future operation of the existing facilities, including the right to enter onto the property for maintenance purposes, with none of the obligations attendant to ownership.

The Buyer wishes to purchase the property for inclusion in its garden center development that will be located on the property and adjacent properties. The purchase price of the property is $186,170. The property was offered by bid

process to the Buyer and to the four adjacent owners. Buyer's offer was the best of three offers received.

The original cost of the property was $30,808. The net book value is $22,127. While the property being sold consists only of land, a portion of the property has been used for gas transmission purposes. Transmission Land and Land Rights are considered depreciable property. The portion used for the electric transmission lines is not depreciable. PG&E proposes to allocate the total sales proceeds and property tax savings based on the weighted averages percentages of the combined gas and electric property's original cost. That allocation yields 28% to the gas transmission operations and 72% to the electric transmission operations.

PG&E proposes to treat the sale of the gas transmission land as a depreciable property sale and flow the proceeds to the ratepayers through a credit to the depreciation reserve. For the electric transmission piece, PG&E proposes to flow the proceeds of the sale to the shareholders since the piece was not depreciated. PG&E states that these proposals are consistent with "traditional" ratemaking methodologies adopted by the Commission, i.e., the net-of-tax proceeds from depreciable property benefit ratepayers through a credit to the depreciation reserve and the net-of-tax proceeds from non-depreciable property allocated to the shareholders.

IV. Protest

ORA's sole concern relates to how the gain-on-sale revenue resulting from the conveyance is treated for ratemaking purposes, i.e., how the benefits are allocated to the ratepayers. ORA states that the Commission's current position on allocation of gain-on-sale revenues is ambiguous. ORA suggests two potential forums for setting policy guidelines for gain-on-sale revenue - PG&E's

Performance-Based Ratemaking (PBR) proceeding Application (A.) 00-09-022, currently suspended by order of Commissioner Wood or a rulemaking on gain-on-sale issues. ORA recommends that any gain-on-sale revenue from this sale should be recorded in PG&E's Real Property Gain/Loss on Sale Memorandum Account until the revenue allocation issue is resolved. ORA further recommends that the application be approved for the sale of the land to the De Silva Group with the issue of gain-on-sale revenue deferred to another proceeding.

PG&E, in its reply filed on August 30, 2001 to ORA's protest, restates its position as proposed in its application and believes the gain-on-sale of depreciable assets, the gas portion of the right-of-way should flow through to the ratepayers as a credit to the depreciation reserve, and the electric portion, since it is now under the Federal Energy Regulatory Commission's (FERC) uniform system of accounts, should follow FERC accounting and ratemaking principles, that is the gain, net of taxes, should flow to the shareholders.

V. Environmental Review

Under the proposed sale, the De Silva Group will procure and deliver to PG&E evidence of compliance with all applicable codes, ordinances, regulations, and requirements for permits and approvals from various governmental agencies and bodies having jurisdiction.

Under the California Environmental Quality Act (Public Resources Code Section 21000, et seq, hereinafter "CEQA"), the Commission is obligated to consider the environmental consequences of a project that is subject to the Commission's discretionary approval.

Where a project is to be approved by more than one public agency, one agency becomes the "lead agency" having responsibility to prepare an Environmental Impact Report (EIR) or negative declaration for the project.

(CEQA Guideline Section 15050, Public Resources Code section 21165.) Generally, if the project is to be carried out by a non-governmental entity, the "lead agency" shall be the public agency with the greatest responsibility for supervising or approving the project as a whole (CEQA Guideline Section 15151.) All other public agencies which have discretionary approval power over the project are "responsible agencies" (CEQA Guideline Section 15381). To comply with CEQA, a "responsible agency" must consider the lead agency's EIR or negative declaration prior to acting upon or approving the project. (CEQA Guideline Section 15050(b).) The specific activities that must be considered by the responsible agency are contained in CEQA Guideline Section 15096.

Because the proposed project is subject to CEQA, we must determine whether the Commission is either the lead or responsible agency under CEQA. In this instant case, the Commission's discretionary approval involves approving PG&E's request for authority to sell this piece of property. The City of Concord appears to have greater responsibility for supervising or approving the project as a whole, because it is the agency with responsibility to approve and oversee construction of the proposed garden center. Accordingly, in our view, the City of Concord is the appropriate lead agency.

Consistent with the above referenced provisions, to fulfill its obligations as a responsible agency, the Commission must review the City's environmental documentation before we act on this sale application. In this case, the City of Concord's Community Development Department-Planning Division did require an EIR or a negative declaration. PG&E submitted as Exhibit "E" to this application the resolution adopting a Negative Declaration with Mitigation Measures and Monitoring Program approved by the City Council of Concord in Resolution No.00-4823.5 on September 5, 2000.

Whether CEQA Guideline 15332, involving local general plan and zoning considerations, may be properly applied to a project for purposes of authorizing an exemption from CEQA appears suited to the expertise and authority of a local jurisdiction, in this instance the City of Concord and the finding of the City's Planner. Additionally, we are aware of no information to indicate that the City's determination of exemption was appealed. Therefore, we will rely upon the lead agency's determination in this matter and find that the Commission as a responsible agency requires no further CEQA review.

VI. Discussion

No public utility may transfer its 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.) The property is currently being used for public utility lines, both electric and gas transmission. Therefore, the property is useful, and Pub. Util. Code § 851 applies.

This proposed sale is in the public interest. PG&E will be able to maintain customer service at a reduced cost due to the ratebase reduction as well as reduced overheads relative to the current ownership of the property. Easements will be retained by the company should it ever have the need to utilize them for maintenance or expansion of its facilities.

PG&E states that this application is a part of "the Company's ongoing efforts to identify under-utilized utility assets, the Property was identified for disposition. We note that in the same issue arises in A.01-07-007," and we would expect the same issue to arise as PG&E identifies other underutilized utility assets for sale.

It is reasonable to approve the sale of the land now, but we will defer the determination of the proper accounting and ratemaking procedures related to

gain-on-sale issues. We will adopt ORA's recommendation and defer the issue of gain-on-sale to another proceeding. There is no reason to defer this issue to a proceeding that has been suspended. The time is ripe for a re-look at gain-on-sale allocation and we will initiate a rulemaking to do so, as resources and priorities allow. In the meantime, PG&E should track this revenue by recording it in its Real Property Gain/Loss on sale Memorandum Account.

VII. Comments on Draft Decision

Section 311(g)(1) of the Public Utilities Code provides that this decision must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

All parties in the proceeding have stipulated to reduce the 30-day comment period required by Section 311(g)(1) of the Public Utilities Code to 7 days.

Findings of Fact

1. PG&E is both a gas and electric utility subject to the jurisdiction and regulation of this Commission.

2. PG&E has a property, 0.92 acres, in the City of Concord in Contra Costa County serving as a gas and electric transmission right-of-way, which it wishes to sell for $186,170, a price based on competitive bid.

3. Subject to Commission authorization required under Pub. Util. Code § 851, PG&E has agreed to sell the property to the De Silva Group for the construction of a garden center.

4. PG&E shall retain an easement through the property to maintain its gas and electric facilities.

5. Development of the property is subject to all applicable laws and receipt of discretionary approval of the City of Concord.

6. Pursuant to CEQA, where a project is to be approved by more than one public agency, one agency becomes the lead agency for purposes of preparing an Environmental Impact Report or negative declaration for the project.

7. Under the applicable CEQA Guidelines, the City of Concord is the appropriate lead agency for CEQA purposes, and the Commission is a responsible agency.

Conclusions of Law

1. The sale and conveyance of the property is subject to Pub. Util. Code § 851.

2. The City of Concord, as the lead agency, has properly determined that the project in question is exempt from CEQA pursuant to CEQA Guideline 15332 and thus, the Commission as a responsible agency requires no further CEQA review.

3. The issue of the gain-on-sale of the property should be deferred to another proceeding as recommended by ORA.

4. The order should be effective today to allow the proposed sale to be executed on an expeditious basis.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) may sell and convey to the De Silva Group LLC the property as described in Exhibit B of Application 01-07-007.

2. Approval of this application is conditioned upon the purchaser, the De Silva Group LLC's compliance with all applicable environmental regulations, pursuant to the California Environmental Quality Act.

3. PG&E shall record all revenues (after taxes) for the sale of the property to PG&E's Real Property Gain/Loss on Sale Memorandum Account established by the Commission in Decision 99-10-001.

4. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.