Decision **DRAFT DECISION OF ALJ EVANS** **(Mailed 3/5/2002)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company, California corporation (U 39 M) and The City and County of San Francisco, for an Order Authorizing the Former to Sell and to Convey to the Latter a Certain Parcel of Land in the City and County of San Francisco County Pursuant to Public Utilities Code Section 851.	Application 01-07-006 (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 4.09 acres of land located in the City and County of San Francisco to the City and County of San Francisco 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 4.09 acre parcel of land in the City and County of San Francisco to the City and County of San Francisco. 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 PG&E's ratemaking proposal for the gain-on-sale based on the $3,841,000 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. 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 the 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 for the construction of a natural gas holder facility, which included the gas holder and outbuildings. PG&E began dismantling the gas holder in 1984 and completed the dismantling in 1985. The company's accounting records indicate that the Property was declared surplus and reclassified as non-utility property following the removal of the gas holder. With adequate easements for its electric lines, it is not foreseeable that the property will ever be useful for public utility purposes.

San Francisco owns the adjacent property and has been a licensee of the sale property since 1980. Currently the City uses the Property for a storage yard and for vehicle parking. The City now wishes to purchase the Property rather than continue the lease.

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, the City and County of San Francisco wishes to purchase the property for the continued use of its Public Works Department. The purchase price of the property is $3,841,000. The most recent appraisal of the Property was for an estimated market value of $3,450,000. The original cost of the Property was $82,356.

The Property has been accounted for as Non-Utility property, outside of ratebase, since the gas holder was retired in 1985. PG&E is proposing that the net of tax proceeds be recorded as a gain to the shareholders of the Company. PG&E maintains that since the shareholders receive a return of their investment only through the sale of non-depreciable property, the shareholders, not the ratepayers, should benefit from the sale of the Property.

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 and the as-yet uninitiated Rulemaking referred to in Decision (D.) 01-06-007. 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 City and County of San Francisco 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 that ORA's position is contrary to Commission precedent as well as to ORA's own position in prior Section 851 applications.

V. Environmental Review

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. While transfers of utility assets are generally projects subject to CEQA review, the facts of this case indicate that the sale, while a project, is not subject to environmental review.

PG&E states that the proposed sale is not subject to CEQA because it will not result in a direct physical change in the environment, citing D.97-07-019, which held that a sale itself is a "purely legal happening" that does not cause any direct physical change to the environment; however, this holding is both outdated and incorrect. More recent Commission decisions have held that sales of utility assets under Section 851 require at least preliminary CEQA review. The proper analysis is fact-specific, rather than an unvarying blanket approach. *See, e.g., Pacific Gas & Electric Company*, D.01-06-005, *mimeo, at 4*. Accordingly we will examine the facts of the present case. Given the facts of this case, where the purchaser has been using the Property for over 20 years, and no change in the use of the Property is in the record before us, no CEQA review is necessary. *See CEQA Guideline* 15061(b)(3).

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.) While the subject was technically removed from ratebase, PG&E has overhead electric distribution lines on the land. Thus, we must review this transfer to determine whether it is in the public interest. We find that allowing this proposed sale is in the public interest because PG&E will have reduced carrying costs relative to its current ownership of the property. In addition, PG&E has retained easements to allow for current maintenance and future operation of its existing electric lines.

PG&E states that this application is a part of "the Company's ongoing efforts to identify under-utilized utility assets, and that the Property was identified for disposition. We addressed the issue of gain-on-sale in D.01-10-051 and determined that we will initiate a rulemaking to address these issues, as resources and priorities allow.

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

The draft decision of Administrative Law Judge Evans in this matter was mailed to the parties in accordance with Pub. Util. Code Sec. 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on _____ and reply comments were filed on _____.

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, 4.09 acres, in the City and County of San Francisco serving as an electric right-of-way, which it wishes to sell for $3,841,000, a price agreed upon by seller and buyer.

3. The Property is presently used for storage and vehicle parking, and no change is contemplated for the Property's use.

4. The estimated market value of the Property is $3,450,000.

5. PG&E will retain an easement through the property to maintain its electric facilities.

6. This sale, while a project, will not result in a direct or reasonably foreseeable indirect physical change in the environment. Therefore, this sale is exempt from CEQA Guideline 15061(b)(2).

Conclusions of Law

1. The sale and conveyance of the property is subject to Pub. Util. Code § 851 and is in the public interest because PG&E retains an easement allowing it to maintain its electric lines, with none of the obligations attachment to ownership, including a reduction with carrying costs.

2. The sale and conveyance of the Property does not require 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 City and County of San Francisco the property as described in Exhibit B of Application 01-07-006.

2. PG&E shall record all revenues (after taxes) from 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.

3. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.