Decision **DRAFT DECISION OF ALJ PRESTIDGE** **(Mailed 5/1/2002)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval under Section 851 for an Easement from PG&E Allowing CPN Pipeline to Install and Maintain Two Underground Gas Pipelines and for Related Access. (U 39 M)	Application 01-10-041 (Filed October 25, 2001)

OPINION GRANTING PETITION TO MODIFY DECISION 02-01-058 IN PART

This decision grants in part the petition to modify (Petition) Decision (D.) 02-01-058 filed by CPN Pipeline Company (CPN), by adding additional findings of fact and conclusions of law to support the requirement for advance Commission approval of assignments of the easement that would alter easement terms. We deny CPN's request for clarification of this requirement in the decision.

Background

In D.02-01-058, we granted the application of Pacific Gas and Electric Company (PG&E) pursuant to Section 851[1] to convey an easement across PG&E property in the area of Pittsburgh, California to CPN. This easement permits CPN to install gas pipelines in the existing Sacramento River Gathering System

[1] All Code references are to the Public Utilities Code, unless otherwise specified.

(SRGS) pipeline in order to operate a new pigging station[2] on adjacent property not owned by PG&E and to interconnect with the SRGS Pipeline. The purpose of this project is to increase gas service reliability for both the Delta Energy Center and the Los Medanos Energy Center.

D.02-01-058 also requires CPN to notify PG&E, and PG&E to seek Commission approval pursuant to Section 851, of any assignment of the easement by CPN that would alter the terms of the easement.[3]

On March 11, 2002, CPN timely filed its petition.[4] PG&E timely filed a response to the petition on March 12, 2002, which supported CPN's request for clarification of the decision.

Discussion

1. Clarification of Requirement in D.02-01-058 for Advance Commission Approval of Assignment of Easement

CPN argues that the text of the decision could be interpreted to require Commission approval of any assignment of the easement, even if the terms of the easement would not change, while Ordering Paragraph (O.P.) 2 appears to require Commission approval only for those assignments that would alter easement terms. CPN therefore asks the Commission to either strike the language that CPN believes is problematic, or to affirm that Commission

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[2] The pigging station will facilitate the cleaning and remote inspection of CPN's gas line facilities.

[3] D.02-01-058, O.P. 2.

[4] CPN's pleading was originally filed as an application for limited rehearing on February 25, 2002. On March 11, 2002, CPN submitted substitute sheets and requested that its pleading be treated as a Petition.

approval is required only when the assignment would alter the terms of the easement.

PG&E also requests clarification of D.02-01-058 to specify that Commission approval is only required when an assignment would alter the terms of the easement.

D.02-01-058 states:

> We are concerned that the proposed easement agreement would permit CPN [Pipeline] to assign, transfer, convey or mortgage the easement without Commission approval. However, we will address this concern by requiring CPN [Pipeline] to give advance notice to PG&E of any such action and will require PG&E to apply for Commission authorization pursuant to Section 851 for any proposed assignment, transfer, conveyance or mortgage of the easement by CPN [Pipeline] <u>that would alter the terms of the existing easement</u>. (Emphasis added.) (D.02-01-058, *mimeo.*, at p. 7)

We note that O.P. 2 similarly states:

> PG&E shall amend Section 15, regarding Assignment; Agreement to Dedicate, and Section 16, regarding Collateral Assignment, of its proposed agreement with CPN to require advance notice to PG&E and Commission approval of any proposed assignment, transfer, conveyance, or mortgage of the easement <u>that would alter the terms of the easement</u>. (*Id.*) (Emphasis added.)

The above language clearly states that Commission approval is required only when the assignment would change the existing easement terms. We, therefore, need not modify the decision to further clarify this requirement and deny CPN's Petition as related to this issue.

2. Adequacy of Findings of Fact and Conclusion of Laws

CPN contends that D.02-01-058 does not include adequate findings of fact or conclusions of law to support the requirement for advance Commission approval of any assignment that would alter easement terms. CPN also states that the decision does not set forth evidence to support this requirement.

Under Section 1705, our decisions must include separately stated findings of fact and conclusions of law by the Commission on all issues material to the order or decision. However, Section 1705 does not require Commission decisions to contain a complete summary of all proceedings and evidence leading to a decision.[5] Instead, we must include adequate findings of fact and conclusions of law to give reviewing courts a meaningful opportunity to ascertain the principles and facts relied on by the Commission in making the decision.[6] Section 1705 generally requires findings of the basic facts upon which the Commission's ultimate finding is based.[7]

Here, the Commission's ultimate finding in D.02-01-058 was that the proposed conveyance of the easement by PG&E to CPN will serve the public interest and should be permitted. We believe that additional findings of fact or conclusions of law regarding possible future assignment of the easement by CPN may not be required. Under Section 851, we have the duty to determine whether the public interest would continue to be served if the terms of the existing

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[5] Toward Utility Rate Normalization (TURN) v. California Public Utilities Commission, 22 Cal. 3d 529, 540 (l978).

[6] Id.

[7] California Motor Transportation Company v. Public Utilities Commission, 59 Cal. 2d 270, 273 (1963).

easement were altered. However, in order to address the concerns raised by CPN and PG&E, we shall modify the decision to further describe the applicable evidence and to add findings of fact and conclusions of law related to the need for advance Commission approval of assignments that would alter easement terms. These modifications shall be as follows:

- The third paragraph on page 4 of the decision shall include a reference to new footnote 10, as follows:

  The proposed easement agreement would permit CPN to assign, transfer, convey or mortgage the easement without the prior consent of the Commission, or of PG&E if the proposed assignment, transfer, conveyance, or mortgage would not result in costs to PG&E.[10]

- A new footnote 10 shall be added to page 4 to read as follows:

  14. The proposed easement agreement between PG&E and CPN, attached to the application, includes paragraphs 15 and 14 (sic) regarding assignment.

- Subsequent footnotes shall be renumbered to reflect the addition of new footnote 10 above.

- The bottom paragraph of page 7 shall include a new third sentence and shall read as follows:

  We are concerned that the proposed easement agreement would permit CPN to assign, transfer, convey or mortgage the easement without Commission approval.[10] However, we will address this concern by requiring CPN to give advance notice to PG&E of any such action and will require PG&E to apply for Commission authorization pursuant to Section 851 for any proposed assignment, transfer, conveyance or mortgage of the easement by CPN that would alter the terms of the existing easement. Commission review of any assignment, transfer, conveyance or mortgage that will change easement terms will serve the public interest by avoiding transactions which would impair

PG&E's ability to use its property to provide service to the public or would interfere with the operation of the pigging station or the interconnection with the SRGS pipeline.

- The Findings of Fact shall be modified to add Findings 11, and 12, as follows:

  11. The proposed easement agreement between PG&E and CPN permits CPN to assign, transfer, convey, or mortgage the easement without first seeking Commission approval.

  12. This decision's requirement that CPN notify PG&E, and that PG&E obtain advance Commission approval pursuant to Section 851 of any assignment, transfer, conveyance or mortgage of the easement that would alter easement terms will avoid transactions which would impair PG&E's use of its property to serve the public or would interfere with the operation of the pigging station or the interconnection with SRGS pipeline.

- The Conclusion of Law (Conclusion 4), shall be renumbered Conclusion 5.

- A new conclusion of Law (Conclusion 4) shall be added, as follows:

  The requirement for advance Commission approval of any assignment, transfer, conveyance or mortgage of easement that will change easement terms serves the public interest.

- O.P. 2 shall be modified to correct an error in the numbering of the applicable sections of the agreement, as follows:

  PG&E shall amend Section 15, regarding Assignment; Agreement to Dedicate and Section 14 (sic), regarding Collateral Assignment, of its proposed agreement with CPN, to require advance notice to PG&E and Commission approval of any proposed assignment,

transfer, conveyance, or mortgage of the easement that would alter the terms of the easement.

Comments on Draft Decision

The Commission mailed the draft decision of the Administrative Law Judge in this matter to the parties pursuant to Section 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure.

Findings of Fact

1. D.02-01-058 clearly requires advance Commission approval pursuant to Section 851 only for those assignments, transfers, conveyances, or mortgages of the easement that will alter easement terms.

2. The proposed easement agreement between CPN and PG&E permits CPN to assign, transfer, convey or mortgage the easement without advance Commission approval.

3. Our requirement in D.02-01-058 for advance Commission approval pursuant to Section 851 of assignments, transfers, conveyances or mortgages that would alter the terms of the easement will avoid transactions which would impair PG&E's ability to use its property to serve the public or would interfere with the operation of the pigging station or the interconnection with the SRGS pipeline.

Conclusions of Law

1. Section 1705 requires Commission decisions to include separately stated findings of fact and conclusions of law on all issues material to the order or decision, Section 1705 does not require Commission decisions to contain a complete summary of all proceedings and evidence leading to a decision.

2. Our requirement in D.01-02-058 for advance Commission approval pursuant to Section 851 of any assignment, transfer, conveyance, or mortgage of the easement that would alter easement terms serves the public interest.

O R D E R

IT IS ORDERED that:

1. The Petition to Modify Decision (D.) 02-01-058, filed by CPN Pipeline Company, is granted in part and denied in part, as indicated in the text of this decision.

2. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.