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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**Agenda ID #13086
RESOLUTION E-4664
July 10, 2014**

R E S O L U T I O N

Resolution E-4664. Pacific Gas and Electric (PG&E) requests approval from the California Public Utilities Commission (CPUC) authorizing PG&E under Public Utilities (PU) Code § 851 to grant the Sacramento and San Joaquin Drainage District (SSJDD) a perpetual easement on a portion of PG&E's property, Sacramento County Assessor's Parcel Nos. 274-0190-019-0000 and 274-0190-020-0000.

PROPOSED OUTCOME:

- This Resolution approves PG&E's Advice Letter 4392-E seeking authority to grant SSJDD a perpetual easement on a portion of PG&E's property.

SAFETY CONSIDERATIONS:

- PG&E indicated that the proposed transaction will not interfere with the safe operation of PG&E's facilities. All utilities are expected to comply with all federal and state safety regulations, including P U Code section 451.

ESTIMATED COST:

- PG&E will collect \$1,300 associated with this transaction; however, since this land was formerly used to support an electric transmission corridor, this amount collects from SSJDD will become part of the Federal Energy Regulatory Commission (FERC) rate case.

By Advice Letter 4392-E, dated April 18, 2014, and substitute sheets filing on April 24, 2014.

SUMMARY

PG&E submitted Advice Letter (AL) 4392-E seeking approval under PU Code Section 851 to grant the Sacramento and San Joaquin Drainage District (SSJDD) a perpetual easement on a portion of PG&E's property, Sacramento County Assessor's Parcel Nos. 274-0190-019-0000 and 274-0190-020-0000.

This Resolution approves PG&E's Advice Letter 4392-E because the transaction is valued at less than \$5 million, the Lead Agency has completed its CEQA review, and the utility may request approval of the transaction by Advice Letter. (PU Code Sections 851, 853).

BACKGROUND

PU Code § 851 requires public utilities to obtain prior authorization from the Commission before selling, leasing, assigning, or otherwise disposing of or encumbering utility property.

On August 25, 2005, Resolution ALJ - 186 implemented a 24-month pilot program to simplify the disposition of certain types of transactions under PU Code § 851. Participation in the pilot program is optional. Applicants may choose to submit a regular application under section 851 for transactions that qualify for this pilot project.

On August 18, 2011, Resolution ALJ - 272 extended the pilot program for another year (until August 23, 2012). The Commission then adopted General Order (GO) 173 to modify and make permanent the former pilot program regulations for Section 851 Advice Letters.

On April 18, 2014, Advice Letter 4392-E was appropriately filed pursuant to the pilot program to expedite the transactions via Advice Letter that otherwise would be subject to a full PU Code section 851 application.

The United States Congress authorized the American River Watershed Common Features Project (ARWCFP) in the Water Resources Development Act (WRDA) of 1996, (Public Law 104-303) for levee improvements.

The State of California (State) authorized the ARWCFP in 1997.

The United States Congress then authorized modifications to ARWCFP in Section 366 of the WRDA in 1999 (Public Law 106-53). The Natomas East Main Drainage Canal Project (NEMDCP) is one of five modifications approved by WRDA 1999. It is a cooperative effort among the U.S. Army Corps of Engineers (USACE), the Central Valley Flood Protection Board (CVFPB), and the Sacramento Area Flood Control Agency (SAFCA).

The subject property requesting easement approval is located at 1959 Railroad Drive in the City of Sacramento, California. It is identified as Sacramento County Assessor's Parcel Nos. 274-0190-019-0000 and 274-0190-020-0000. It was a PG&E electric transmission corridor but currently is vacant. PG&E does not anticipate using the subject property for any purpose.

SSJDD acting by and through the CVFPB will use the easement for ingress and egress access in NEMDCP at the Sacramento River. The project involves construction of a cement slurry wall approximately 75-feet deep through the center of an existing levee to prevent under seepage. SSJDD will use the property as a construction staging area to support large vehicles and supplies and then as an area to access and maintain the levee system.

NOTICE

Notice of AL 4392-E was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section 4 of General Order 96-B.

PROTESTS

Advice Letter AL 4392-E was not protested.

DISCUSSION

PG&E's request to grant the Sacramento and San Joaquin Drainage District (SSJDD) a perpetual easement on a portion of PG&E's property will be evaluated based on:

- nature of the request
- Review of the right of way (ROW) contract and easement deed
- environmental consequences

- safety and reliability
- cost or savings

Nature of the Request

SSJDD acting by and through the CVFPB will use the easement for the NEMDCP at the Sacramento River. The easement will serve public interest by devoting currently unused land to facilitate construction of a slurry wall to support important levee control efforts in a geographic area subject to flooding.

Review of the Right of Way (ROW) Contract and Easement Deed

Staff has reviewed the associated ROW contract and Easement Deed and they reflect the interests of the public. PG&E and the State have avoided eminent domain litigations and determined a fair market value of the property based on an appraisal report. The ROW contract and easement deed addressed handling of hazardous substances and the proper uses of the easement.

Environmental Consequences

CPUC, acting as a Responsible Agency, concurs with CVFPB's Mitigated Negative Declaration (MND).

CEQA requires the Commission to consider the environmental consequences of its discretionary decisions. Pursuant to CEQA and Rule 2.4 of the Commission's Rules of Practice and Procedure, the Commission examines projects to determine whether any potential environmental impacts are likely in order that adverse effects are avoided and environmental quality is restored or enhanced to the fullest extent possible. In this instance, the Commission is not a Lead Agency, but a Responsible Agency under CEQA with respect to the environmental review of NEMDCP underlying the easement agreement with PG&E. CVFPB as the lead agency developed an Environmental Assessment/Initial Study (EA/IS) and a MND. The draft EA/IS and MND were circulated for public review from June 15, 2012 to July 16, 2012. CVFPB approved the final MND on August 24, 2012, and issued a Notice of Determination on August 24, 2012. The Commission, as a Responsible Agency, must adopt CVFPB's findings and conclusions as set out in their MND.

The Final IS/MND concluded that the effect of this project on vegetation and wildlife, special status species, air quality, water resources and quality, traffic and circulation, and noise and vibration could be reduced to less than significant impacts with the following prescribed mitigation measures.

Vegetation and Wildlife

A certified arborist will supervise the removal of two oak trees along the upstream and downstream segments of this project. They will be replaced by new trees at an inch for inch ratio.

Special Status Species

NEMDCP would result in direct and indirect effects on elderberry plants, which is the host plant for the Federally-listed threatened valley elderberry longhorn beetle. USACE proposed a 20-foot radius buffer zone, using concrete or water-filled barriers for protection, and limiting construction until after the no-disturbance period (after June 15). These areas would be fenced, flagged, and maintained during construction. Environmental awareness training would be conducted for all workers before they begin work. Therefore, effects of construction to the valley elderberry longhorn beetle would be minimized with implementation of the conservation measures.

USACE would take steps to avoid and minimize impacts to raptors and other protected avian species. If it is unfeasible to construct outside of the nesting periods (April – September 15th), a qualified biologist would survey the project area and all areas within one-half mile of the project prior to construction. If the survey determines that a nesting pair is present, USACE would coordinate with the California Department of Fish and Game (CDFG) and the United States Fish and Wildlife Service (USFWS) to implement the proper avoidance and minimization measures. CDFG typically requires the avoidance of nesting sites during construction activities to avoid potential effects to nesting Swainson's hawks. These measures include avoiding construction during the breeding season and monitoring of the nest site by a qualified biologist.

Air Quality

The contractor would submit a construction equipment list to be used in the project for approval by USACE and the Sacramento Metropolitan Air Quality Management District (SMAQMD). SMAQMD would confirm the fleet emissions and endorse the list only if the total fleet emissions would meet a 20% reduction in NOx and a 45% reduction in PM10 compare to the State fleet emissions

average. The contractor would be required to follow the requirements of SMAQMD's standard mitigation program. Any remaining emissions over the NOx threshold should be reduced via a mitigation fee payment.

Other air quality mitigation measures including water and coverings to stabilize dust emission; and suspend all grading, earth moving, or excavation activities when winds exceed 20 miles per hour.

Water Resources and Quality

The contractor would prepare a spill control plan and a Storm Water Pollution Prevention Plan (SWPPP) prior to construction. USACE reviews and approves these plans before construction.

NEMDCP may have an overall positive effect on water quality. By diminishing the possibility for a catastrophic flood event, this would avoid significant long term impacts to water quality by avoiding contamination from flooded vehicles, household and industrial chemicals, raw sewage, and other wastes that may be present in the area.

Traffic and Circulation

Project would cause an increase in traffic volume, reduction of speeds on local residential streets, and the temporary closure of the Sacramento Northern Bike Trail. The contractor will be required to develop a Traffic Control Plan to be reviewed and approved by the City of Sacramento prior to construction.

Noise and Vibration

PG&E will reduce ambient sound levels during construction by limiting construction hours; muffling and shielding intakes and exhaust on construction equipment; shrouding or shielding impact tools; turning off all equipment, haul trucks, and worker vehicles when not in use for more than 30 minutes; notifying residences about the type and schedule of construction.

Safety and Reliability

PG&E stated that this relocation project will not interfere with the safe operation of PG&E's facilities, or with the provision of service to PG&E's customers. In fact, the easement will facilitate the construction of a slurry wall and strengthen the levee system, which upon completion will improve flood safety in the adjacent area.

Cost or Savings

PG&E will receive a one-time nominal fee of \$1,300 for granting the easement. However, since this land was formerly used to support an electric transmission corridor, this amount collects from SSJDD will become part of the Federal Energy Regulatory Commission (FERC) rate case. Also, since no PG&E property is sold or disposed, there are no changes to PG&E's distribution rate base as a result of granting the proposed easement.

Summary

The Commission has evaluated this Advice Letter based on the nature of the request, review of the ROW contract and easement deed, safety, reliability, costs, and CEQA review. We find that results of the above evaluations are satisfactory and CVFPB's MND findings and conclusions represents our independent judgment regarding the environmental impact of the proposed project. Therefore, we will adopt the Right of Way Contract, the Easement Deed, and the MND.

COMMENTS

P.U. Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the CPUC. 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 waive the 30-day waiting period required by P.U. Code section 311(g)(1) and the opportunity to file comments on the draft resolution. Accordingly, this matter will be decided by the CPUC on July 10, 2014.

FINDINGS

1. PU Code § 851 requires public utilities to obtain prior authorization from the Commission before selling, leasing, assigning, or otherwise disposing of or encumbering utility property.
2. Resolution ALJ - 186 implemented a 24-month pilot program to simplify the disposition of certain types of transactions under PU Code § 851.

3. The Commission adopted General Order (GO) 173 to modify and make permanent the former pilot program regulations for Section 851 Advice Letters.
4. AB 698 amends Sections 851 and 853 to provide authority for certain Advice Letters to be approved by Executive Director or Division Director.
5. PG&E submitted Advice Letter 4392-E on April 18, 2014, seeking authority pursuant to PU Code section 851 to grant SSJDD a perpetual easement on a portion of PG&E's property, Sacramento County Assessor's Parcel Nos. 274-0190-019-0000 and 274-0190-020-0000.
6. PG&E appropriately filed Advice Letter 4392-E pursuant to our pilot program to expedite certain transactions via Advice Letter that otherwise would be subject to a full PU Code section 851 application (Resolution ALJ-272).
7. PG&E served all required parties in accordance with General Order 96-B, Section IV.
8. Protests to Advice Letter 4392-E were due no later than May 8, 2014. No protests were received.
9. CVFPB acted as the Lead Agency pursuant to CEQA for the environmental review of the proposed NEMDCP.
10. CVFPB circulated draft EA/IS and MND for public review from June 15, 2012 to July 16, 2012. The final MND was approved by CVFPB on August 24, 2012.
11. CVFPB issued a Notice of Determination on August 24, 2012.
12. CVFPB's EA/IS examined the project in detail and all related impacts.
13. The EA/IS and MND concluded that all impacts of the project could be reduced to less-than-significant levels.
14. CVFPB has examined the entire construction project and stated that the entire construction project will not have a significant adverse effect on the environment.
15. The CPUC is a Responsible Agency pursuant to CEQA for the environmental review of the underlying easement agreement with PG&E.
16. The CPUC's decision to grant or deny the relief sought in AL 4392-E requires that the Commission consider the analysis and conclusions of CVFPB's

environmental review findings, conclusions, and mitigation measures identified therein.

17. The Commission reviewed and considered CVFPB's environmental review; including the findings, conclusions, and mitigation measures therein; and determined that its findings and conclusions reflect our independent judgment.
18. We conclude that the CVFPB's environmental review is competent, comprehensive and have been completed in compliance with CEQA and the Public Resources Code, and should be adopted by the Commission as adequate for our decision-making purposes pursuant to CEQA.
19. Pursuant to PU Code section 311(g)(2) and Rule 14.6(c)(2) the 30-day comment period for Draft Resolutions is being waived.
20. PG&E will collect \$1,300 associated with this transaction.
21. PG&E stated that this relocation project will not interfere with the safe operation of PG&E's facilities, or with the provision of service to PG&E's customers.
22. The CPUC should adopt the Right of Way Contract, the Easement Deed, and the MND.

THEREFORE IT IS ORDERED THAT:

1. CVFPB's environmental review for NEMDCP is adequate for the Commission's decision-making purposes and is hereby adopted pursuant to CEQA.
2. AL 4392-E is approved.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on July 10, 2014, the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director