

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific Gas and Electric Company (U39E) for Commission Approval Under Public Utilities Code Section 851 to Sell the Merced Falls Hydroelectric Project to Merced Irrigation District.

Application 15-04-003
(Filed April 1, 2015)

**DECISION APPROVING SETTLEMENT AND
AUTHORIZING SALE OF UTILITY PROPERTY**

Summary

We approve the joint motion of Pacific Gas and Electric Company and the Office of Ratepayer Advocates for approval of a proposed settlement. We authorize the sale of the Merced Falls Hydroelectric Project to the Merced Irrigation District pursuant to the terms of the Settlement and the related ratemaking treatment of the proceeds of the sale. This proceeding is closed.

Background

On April 1, 2015, Pacific Gas and Electric Company (PG&E) filed an application under Public Utilities Code Section 851, and Articles 2, 3, and 7 of the Commission's Rules of Practice and Procedure, to Sell the Merced Falls Hydroelectric Project to Merced Irrigation District. PG&E also requests approval of a ratemaking treatment and Conservation Easement conveying a permanent conservation easement to the Sierra Foothill Conservancy in accordance with terms and conditions specified in PG&E's bankruptcy Settlement Agreement and

related Stipulation Resolving Issues Regarding the Land Conservation Commitment approved by the Commission in Decision (D.) 03-12-035.

The Commissions Office of Ratepayer Advocates (ORA) filed a protest on May 4, 2015. ORA protests PG&E's requests to burden ratepayers with the entire \$5.54 million loss-on-sale as unreasonable, inconsistent with the law, and against the public interest.

On May 14, 2015 PG&E filed a Reply to the Office of Ratepayer Advocates Protest to its Application.

By Ruling dated August 3, 2015, a prehearing conference (PHC) was set for August 18, 2015.

On August 18, 2015, a PHC was held to determine the parties, positions of the parties, issues, and other procedural matters.

On December 22, 2015 the Assigned Commissioner issued a Scoping Ruling.

On March 29, 2016 the parties held a settlement conference.

On April 12, 2016 the parties filed a joint motion for approval of a settlement agreement together with a copy of the proposed settlement agreement.

On July 5, 2016 PG&E filed a supplement to the Application. In this supplement, PG&E provides for approval the final form of a Conservation Easement (CE) by and between Merced Irrigation District (MeID) and the Sierra Foothill Conservancy (SFC), in accordance with the terms and conditions of (1) PG&E's bankruptcy Settlement Agreement and related Stipulation Resolving Issues Regarding the Land Conservation Commitment approved in Decision 03-12-035, and (2) PG&E-MeID's Purchase and Sale Agreement.

This request to convey a CE is the last condition in the proposed Settlement of this application between PG&E and the Office of Ratepayer Advocates (ORA).

Terms of the Proposed Settlement

The Settlement, a copy of which is attached to this decision, revises two key requests in PG&E's Application. These revisions result in a \$1 million benefit to customers, in addition to the benefits already identified in the Application. First, the Application requested that the entire loss of sale be allocated to customers, as an exception to the Gain (Loss) on Sale rules. However, the Settlement applies the Gain (Loss) on Sale rules to the sale, but then allocates an additional \$250,000 of the loss to shareholders. Second, instead of amortizing the loss of sale over a five-year period as requested in the Application, PG&E will record the entire loss in the 2016 calendar year. This ratemaking change provides an additional \$750,000 in customer savings. These provisions, plus the grant of the conservation easement described above, constitute the major provisions of the Settlement Agreement.

In Article 3.3 of the Settlement Agreement, the Settling Parties agreed that sale of Merced Falls is in the best interest of customers as it represents the lowest cost path forward for the Project, meaning that the sale of the Project provides the most financial savings to customers when compared to PG&E retaining ownership of or decommissioning the Project. To address the sole issue defined in the Scoping Memo - "How to allocate the loss that is going to be incurred upon the sale of this facility" - the settling parties agreed to allocate the loss according to the following table:

Table 1
Merced Falls 851 Proceeding
Allocation of Gain/Loss On Sale
Costs Updated Through December 31, 2015

Net Book Value as of 3/15:		Gain(Loss) on Sale
Net Plant-Land	13,077	
Net Plant-Non-Land	3,394,248	
Net Plant	3,407,326	
CWIP (Inc. Relicensing)	3,189,090	
Net Book Value	6,596,416	
Sales Proceeds	850,000	
Total Pre-tax Gain (Loss):	(5,746,416)	
 Allocation of Loss Per Gain/Loss on Sale Decision:		
Depreciable Assets (Net Plant Non-Land and Construction Work in Progress (“CWIP”)):	100% to Ratepayers	(5,735,023)
Non-Depreciable Assets (Land):	67% to Ratepayers	(7,633)
	33% to Shareholders	(3,759)
Allocation of Loss per Settlement Agreement:		
Shareholder Contribution per Gain/Loss-on-Sale Rules	(3,759)	
Additional Shareholder Contribution per Settlement	(250,000)	
Total Shareholder Loss	(253,759)	
Ratepayer Contribution per Gain/Loss-on-Sale Rules		(5,742,656)
Reduction in Contribution per Settlement		250,000
Total Ratepayer Loss		(5,492,656)

The Settling Parties applied the Gain (Loss) on Sales rules to allocate the loss from the Project’s sale, with Depreciable Assets (in this case, Net Plant Non-Land and CWIP) allocated 100 percent to ratepayers, and Non-Depreciable Assets (Land) allocated among ratepayers and shareholders, 67 percent and 33 percent, respectively. As Table 1 also reflects, the Settling Parties agreed PG&E will forego \$1 million in ratepayer recovery, achieved through two regulatory revisions to PG&E’s request:

1. PG&E agreed it will not recover \$250,000 of the loss on the sale from customers. The Settling Parties agree that this \$250,000 is not attributed to any specific cost, liability, allegation, or action (Article 3.5).
2. PG&E will record the total loss on the sale of Merced Falls to the Utility Generation Balancing Account upon close of the sale, and PG&E will not establish a regulatory asset to amortize the loss on sale over a five-year period. Proceeding in this manner saves customers approximately \$750,000 in return on the regulatory asset (Article 3.4).

In addition, the Settling Parties agreed to four additional regulatory procedures, each of which PG&E will implement after the date of closing the Purchase and Sale Agreement. First, Article 3.6 states that PG&E's revenue requirement associated with the Project's retired rate base and associated estimated Operations and Maintenance costs included as part of the 2014 GRC will be reduced from the base revenues recovered in customer rates.

Second, Article 3.7 states that PG&E's rate base and CWIP will be reduced by the amount of the historical cost less depreciated value at the time of the sale, less the sale proceeds. Third, Article 3.8 states that PG&E will modify its 2017 GRC request to remove the Merced Falls Project from its generation revenue requirement request. Finally, Article 3.9 states that PG&E will true-up the final financial information as of the closing of the sale and will provide it to the Commission in a compliance advice letter filing submitted within 45 days following closing. The financial information will consist of the final calculation of the loss-on-sale and tax information related to the transaction. This process is consistent with Decision 02-12-020 in which the Commission approved of the allocation of gain as proposed in the application, but deferred the determination of the actual gain allocation to a later compliance advice letter procedure.

Applicable Rules and Required Findings

Rule 12(d) of the Commission's Rules of Practice and Procedure (Rules) requires that any settlement be "reasonable in light of the whole record, consistent with law, and in the public interest." As discussed below, we find that the settlement meets these requirements.

Moreover, as the United States Court of Appeals for the Ninth Circuit has observed, in evaluating a settlement, that the agreement must stand or fall on its own terms, not compared to some hypothetical result that the negotiators might have achieved, or that some believe should have been achieved:

Settlement is the offspring of compromise; the question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion. (*Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998).

Based upon our review of the record, we find that the parties to the Settlement Agreement had a sound and thorough understanding of the issues and all of the underlying assumptions and data included in the record. Thus, we can consider the Settlement Agreement as the outcome of negotiations between competent and well-prepared parties able to make informed choices in the settlement process.

Rule 12.1 specifically addresses the requirements for adoption of proposed settlements, subject to certain limitations in Rule 12.5. Specifically, Rule 12.1(a) states:

Parties may, by written motion any time after the first prehearing conference and within 30 days after the last day of hearing, propose settlements on the resolution of any material issue of law or fact or on a mutually agreeable outcome to the proceeding. Settlements need not be joined by all parties; however, settlements in applications must be signed by the

applicant and, in complaints, by the complainant and defendant.

The motion shall contain a statement of the factual and legal considerations adequate to advise the Commission of the scope of the settlement and of the grounds on which adoption is urged. Resolution shall be limited to the issues in that proceeding and shall not extend to substantive issues which may come before the Commission in other or future proceedings.

When a settlement pertains to a proceeding under a Rate Case Plan or other proceeding in which a comparison exhibit would ordinarily be filed, the motion must be supported by a comparison exhibit indicating the impact of the settlement in relation to the utility's application and, if the participating staff supports the settlement, in relation to the issues staff contested, or would have contested, in a hearing.

Rule 12.1(d) provides that:

The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

Rule 12.5 limits the future applicability of a settlement:

Commission adoption of a settlement is binding on all parties to the proceeding in which the settlement is proposed. Unless the Commission expressly provides otherwise, such adoption does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding.

Based upon our review of the Settlement Agreement we find that it contains statements of the factual and legal considerations adequate to advise the Commission of the scope of the Settlement Agreement and of the grounds for its adoption; that the Settlement Agreement is limited to the issues in this proceeding; that the Settlement Agreement includes a comparison indicating the

impact of the settlement in relation to contested issues raised by the interested parties in prepared testimony, or which they would have contested in a hearing; and that pursuant to Rule 12.5, that the Settlement Agreement would not bind or otherwise impose a precedent in this or any future proceeding.

Accordingly, we conclude, pursuant to Rule 12.1(d), that the Settlement Agreement is reasonable in light of the whole record, consistent with law, and in the public interest and should be approved.

Categorization and Need for Hearing

In Resolution ALJ 176-3355, issued on April 9, 2015, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings would be necessary. Parties agreed that the proposed settlement adequately presented their positions and resolved all disputed issues, rendering hearings unnecessary.

Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

Assignment of Proceeding

Liane Randolph is the assigned Commissioner and Karl J. Bemmesderfer is the assigned ALJ in this proceeding.

Findings of Fact

1. Sale of the Merced Falls Hydroelectric Project to the Merced Irrigation District as contemplated in the Application, is the least costly to ratepayers disposition of the Project.

2. The Settlement Agreement provides additional benefits to ratepayers beyond those contemplated in the Application.

Conclusions of Law

1. The Settlement Agreement is reasonable in light of the whole record, consistent with law, and in the public interest and should be approved.

2. Evidentiary hearings were not necessary.

3. Application 15-04-003 should be closed.

ORDER

1. The Settlement Agreement between Pacific Gas and Electric Company and the Office of Ratepayer Advocates attached hereto as Attachment A is approved.

2. Sale of the Merced Hydroelectric Project to Merced Irrigation District pursuant to the terms of the Settlement Agreement is approved.

3. The Gain (Loss) on Sale Rules shall apply to the Sale except that an additional \$250,000 in Loss shall be allocated to shareholders.

4. Pursuant to Decision 03-12-035, disposition of the watershed lands is subject to the recommendations of the Pacific Forest Watershed Stewardship Council.

5. Evidentiary hearings are not necessary.

6. Application 15-04-003 is closed.

Dated _____, in San Francisco, California.

ATTACHMENT A

<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M163/K484/163484250.PDF>