

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U 39 M), a California corporation, and Starlink Logistics Inc., a Delaware corporation, for an order Authorizing the Sale and Conveyance of a Certain Parcel of Land in San Mateo County Pursuant to Public Utilities Code Section 851.

Application 03-05-038
(Filed May 29, 2003)

DECISION GRANTING APPROVAL UNDER PUBLIC UTILITIES CODE SECTION 851 FOR SALE AND CONVEYANCE OF REAL PROPERTY

We grant the Application of Pacific Gas & Electric Company (PG&E) and Starlink Logistics Inc. (Starlink) for approval of the sale and conveyance of a certain parcel of land in San Mateo County from PG&E to Starlink under Public Utilities Code Section 851.¹

Background

Starlink is the owner of a parcel of land (Starlink Parcel) adjacent to the PG&E “Cooley Landing” substation in the City of East Palo Alto (PG&E Parcel). A predecessor corporation to Starlink operated a herbicide and pesticide manufacturing plant on the Starlink Parcel from 1926 to 1970. Arsenic runoff from the manufacturing plant contaminated both the Starlink Parcel and the PG&E Parcel. The California Regional Water Quality Control Board, San

¹ All statutory references are to the Public Utilities Code unless noted otherwise.

Francisco Bay Region (RWQCB) has ordered Starlink to abate the contamination on both Parcels. Starlink has complied with the order in respect of the Starlink Parcel, and now seeks to purchase most of the PG&E Parcel in order to complete the task of abating the contamination. The portion of the PG&E Parcel to be sold to Starlink pursuant to this application is hereafter referred to as “the Site.”

The Cooley Landing substation is approximately 7.27 acres in total. The Site consists of 3.38 acres of non-tidal-marsh land and does not include any of the land on which the substation stands. As part of the transaction, Starlink will grant PG&E a permanent easement for the power lines that cross the Site.

The Application

On May 29, 2003, PG&E and Starlink filed their joint application, seeking authorization from the Commission for the sale and conveyance of the Site to Starlink. The application is made under Section 851, which requires Commission approval before a utility can sell, lease, assign, mortgage, or otherwise dispose of or encumber² the whole or any part of its property that is necessary or useful in the performance of its duties to the public.³

² As the Commission previously stated: “The language of Section 851 is expansive, and we conclude that it makes sense to read “encumber” in this statute as embracing the broader sense of placing a physical burden, which affects the physical condition of the property, on the utility’s plant, system, or property.” (D.92-07-007, 45 CPUC2d 24, 29.)

³ Section 851 reads:

No public utility other than a common carrier by railroad subject to Part I of the Interstate Commerce Act (Title 49, U.S.C.) shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its railroad, street railroad, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, nor by any means whatsoever, directly or indirectly, merge or

Footnote continued on next page

Analysis and Action

We grant PG&E's and Starlink's request under Section 851 to sell and convey the Site. The basic task of the Commission in a Section 851 proceeding is to determine whether the transaction serves the public interest: "The public interest is served when utility property is used for other productive purposes without interfering with the utility's operation or affecting service to utility customers." (D.02-01-058.) We have reviewed the proposed transaction and find it does not interfere with PG&E's operation or affect its ability to provide service to its customers. The Site is excess to the utility's needs. The easements to be granted to PG&E in connection with the sale of the Site will guarantee PG&E unfettered access to the substation and the power lines. The money to be paid

consolidate its railroad, street railroad, line, plant, system, or other property, or franchises or permits or any part thereof, with any other public utility, without first having secured from the commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation made other than in accordance with the order of the commission authorizing it is void. The permission and approval of the commission to the exercise of a franchise or permit under Article 1 (commencing with Section 1001) of Chapter 5 of this part, or the sale, lease, assignment, mortgage, or other disposition or encumbrance of a franchise or permit under this article shall not revive or validate any lapsed or invalid franchise or permit, or enlarge or add to the powers or privileges contained in the grant of any franchise or permit, or waive any forfeiture. Nothing in this section shall prevent the sale, lease, encumbrance or other disposition by any public utility of property which is not necessary or useful in the performance of its duties to the public, and any disposition of property by a public utility shall be conclusively presumed to be of property which is not useful or necessary in the performance of its duties to the public, as to any purchaser, lessee or encumbrancer dealing with such property in good faith for value; provided, however, that nothing in this section shall apply to the interchange of equipment in the regular course of transportation between connecting common carriers.

for the Site, and the removal of the Site from the rate base, will financially benefit the ratepayers. Abatement of the contamination on the Site is a productive purpose. Accordingly, the transaction is in the public interest and should be approved.

Environmental Review

In its application, PG&E requests that the Commission find the proposed sale to be exempt under California Environmental Quality Act (CEQA) because the buyer does not propose any change in use of the property following the sale and thus, the sale would not cause any direct or reasonably foreseeable indirect changes to the environment. (14 Cal. Code Regs., Sections 15060(c)(2), 15061(b)(3).) PG&E's CEQA discussion does not suggest how the Commission should address the issue of direct or reasonably foreseeable changes to the environment which will result from the environmental cleanup that buyer would undertake following the sale, pursuant to the order of the RWQCB.

CEQA (Public Resources Code Section 21000 et seq.) applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to "inform governmental decision-makers and the public about the potential significant environmental effects of the proposed activities." (Title 14 of the California Code of Regulations, hereafter CEQA Guidelines, Section 15002.)

Because the Commission must issue a discretionary decision (i.e., grant Section 851 authority) without which the proposed activity cannot proceed, and because the activity has the potential to result in either a direct physical change in the environment or a reasonably foreseeable indirect physical change to the environment (CEQA Guideline Section 15378), the application is subject to CEQA and the Commission must act as either a lead or responsible agency under

CEQA. The lead agency is the public agency with the greatest responsibility for supervising or approving the project as a whole. (CEQA Guidelines Section 15051(b).) A responsible agency is required to consider the environmental consequences of a project that is subject to its discretionary approval and in particular, to consider the lead agency's environmental documents and findings before acting upon or approving a project. (CEQA Guideline Section 15050(b).) In this case, the RWQCB is the lead agency and the CPUC is a responsible agency.

We agree that if the buyer does not propose any change in use of the property that would be conveyed under the proposed sale, we can be reasonably certain that there will be no direct or reasonably foreseeable indirect change in the environment based on use. Accordingly, the activity is exempt from CEQA review pursuant to CEQA Guidelines Sections 15060(c)(2) and 15061(b)(3). Furthermore, CEQA Guidelines Section 15530 provides a categorical exemption from CEQA review for minor activities to mitigate or eliminate hazardous waste or hazardous substances. Thus, the remedial environmental cleanup on the property is also exempt from our CEQA review.

Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Karl J. Bemesderfer is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The RWQCB has ordered to Starlink to abate arsenic contamination on the Site.
2. In order to carry out the order of the RWQCB, Starlink needs to acquire the Site from PG&E.
3. Starlink will grant PG&E permanent access easements to the Cooley Landing Substation and the transmission towers and lines that cross the Site.
4. The RWQCB is the lead agency for environmental review under CEQA.
5. The Commission is a responsible agency for environmental review under CEQA.
6. Buyer does not propose any change in use of the property following the sale.
7. Buyer will conduct remedial environmental cleanup on the property pursuant to RWCQB order.
8. CEQA Guidelines Sections 15060(c)(2) and 15061(b)(3) provide an exemption from CEQA review for projects where it can be seen with reasonable certainty that there will be no direct or reasonably foreseeable indirect change in the environment.
9. CEQA Guidelines Section 15330 provides an exemption from CEQA review for minor activities to mitigate or eliminate hazardous waste or hazardous substances.

Conclusions of Law

1. Authorizing the sale of the Site to Starlink is in the public interest.
2. The proposed sale is exempt from CEQA review pursuant to CEQA Guidelines Sections 15060(c)(2), 15061(b)(3) and 15530.

O R D E R

IT IS ORDERED that:

1. The joint application of Pacific Gas and Electric Company and Starlink Logistics Inc. for authority to sell and convey approximately 3.38 acres of land in San Mateo County to Starlink Logistics Inc. is approved.

2. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.