

PUBLIC UTILITIES COMMISSION505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

May 8, 2003

Agenda ID# _____
Alternate to Agenda ID# 1838
Ratesetting

TO: PARTIES OF RECORD IN APPLICATION 00-05-033.

Enclosed is the Alternate Draft Decision of Commissioner Kennedy to the Draft Decision of Administrative Law Judge (ALJ) Patrick.

When the Commission acts on the draft or alternate decision, it may adopt all or part of it as written, amend or modify it, or set aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Public Utilities Code Section 311(e) requires that an alternate to a draft decision be served on all parties, and be subject to public review and comment prior to a vote of the Commission. Rule 77.6(d) provides that comments on the alternate draft decision be filed at least seven days before the Commission meeting.

Comments on the alternate decision must be filed and served May 15, 2003. There will be no reply comments.

Pursuant to Rule 77.3 comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

Angela K. Minkin
Chief Administrative Law Judge

AKM:bb1

Attachment

COM/SK1/bb1

ALTERNATE DRAFT

Agenda ID

(Alternate to Agenda ID #

1838)

Ratesetting

Decision **ALTERNATE DRAFT DECISION OF COMMISSIONER KENNEDY**
(Mailed May 8, 2003)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
to Establish Market Values for and to Sell its
Generation-Related Property Located at
Bridgehead Road in Antioch Pursuant to Public
Utilities Code Sections 367(b) and 851. (U 39 M)

Application 00-05-033
(Filed May 15, 2000)

**OPINION GRANTING APPLICATION
TO SELL THE NEW BRIDGE MARINA PROPERTY**

1. Summary

Pacific Gas and Electric Company (PG&E) seeks authorization, pursuant to Pub. Util. Code §§ 367(b) and 851, to market value by sale a strip of land known as the New Bridge Marina property located at Bridgehead Road in Antioch. The property is a non-nuclear generation-related property that is not necessary or useful to PG&E's utility distribution operations. The application is unopposed.

The Commission concludes that § 377, as amended by Assembly Bill (AB) 6X, does not bar the sale of generation-related properties no longer used directly or indirectly for electric generation purposes. The application is granted and the proceeding is closed.

2. Procedural History

The application was filed on May 15, 2000 and was noticed in the Commission's Daily Calendar on May 23, 2000. In Resolution ALJ 176-3040,

dated June 8, 2000, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received regarding the sale of the New Bridge Marina property and a public hearing is not required. We affirm the determinations made in Resolution ALJ 176-3040.

3. Background

PG&E acquired the New Bridge Marina property in 1992 in settlement of a legal claim related to particulate fallout from the Contra Costa Power Plant. The property is a 19 feet by 735.14 feet strip of land (0.321 acre). The prior owner used the property for an irrigation pipe and pump to bring water from the Sacramento River. A standpipe and associated pump house, no longer in use, are located on the property. These items need to be demolished.

4. Market Valuation and Divestiture

PG&E intends to quit claim the property, including the improvements, to Buyers for \$1.00 and asks that the Commission determine that this amount represents the property's market value for purposes of § 367(b). Buyers had informed PG&E of their belief that the standpipe and pump house located on the property constitute a nuisance. To address this claim, and because the property's inaccessible location renders it valueless to anyone other than Buyers, PG&E entered into negotiations to sell the property to Buyers.¹ At PG&E's request, Buyers commissioned an appraisal, which concluded that the cost of demolition of the standpipe and pump station would exceed the value of the property, and

¹ The Buyers are: Leon R. Bierly, Joann B. Bierly, Wallace Kent Gibson, Judith E. Gibson, Colin Dale Brown, Patricia Ann Brown, Ivan R. Bierly and Margaret D. Bierly as Trustees of the Bierly Family Trust, and Stephen M. Klee and Joann C. Klee as Trustees of the Klee Family Trust (Buyers).

that the value of the property was zero. PG&E therefore agreed to quit claim the property to Buyers in exchange for \$1.00. Buyers have agreed to remove the concrete standpipe and pump house at their own expense, and release PG&E from liability arising out of the transfer.

PG&E states that the property is not necessary and useful to its utility distribution operations. Due to the impractical shape and inaccessibility of the property, the property has little value. In addition, the cost of demolishing the standpipe and pump house will exceed the property's value. Given that Buyers will bear the cost of demolition, the \$1.00 sale price exceeds the property's fair market value.

5. Public Utilities Code Section 377

In considering this application, we need to address § 377, which reads:

The commission shall continue to regulate the facilities for the generation of electricity owned by any public utility prior to January 1, 1997, that are subject to commission regulation until the owner of those facilities has applied to the commission to dispose of those facilities and has been authorized by the commission under Section 851 to undertake that disposal. Notwithstanding any other provision of law, no *facility for the generation of electricity* owned by a public utility may be disposed of prior to January 1, 2006. The commission shall ensure that public utility *generation assets* remain dedicated to service for the benefit of California ratepayers. (Section 377, as amended by AB 6X, emphasis added.)

Thus, before we may consider the merits of this application, we must address the threshold question—does § 377 bar the proposed land transaction?

The assets in question here were owned by PG&E prior to January 1, 1997. We must determine whether the assets that PG&E wants to dispose of are a facility for the generation of electricity. If so, such assets may not be disposed of prior to January 1, 2006. The obvious example of a facility used for the

generation of electricity would be a power plant, which literally is a facility that generates electricity. Section 377 clearly bars disposal of power plants owned by public utilities.²

But we are left with the question of whether § 377 only bars disposal of a power plant, itself, or whether it has a broader scope. We must determine whether a facility for the generation of electricity includes more than just the power plant. For example, does § 377 bar the sale of a generation-related property no longer used directly or indirectly for electric generation purposes?

Section 377 does not specifically define the phrase “facility for the generation of electricity” or “generation assets.” However, upon reviewing the legislative history, we believe that the fundamental purpose of § 377 is to ensure that “public utility generation assets remain dedicated to service for the benefit of California ratepayers.” It is uncontroverted that the New Bridge Marina property was not used directly or indirectly for electric generation purposes. Thus, this property is not the kind of facility that the Legislature had in mind when it enacted AB 6X to amend § 377.³

² This is confirmed by the subsequent enactment of § 377.1, which expressly exempted six hydroelectric plants from the restrictions of § 377.

³ For example, the Senate Energy, and Communications Committee Analysis confirms the intended scope of the legislation. It states: “The bill further flatly prohibits the sale of any public utility-owned *power plant* until January 1, 2006.” (Emphasis added.) The analysis goes on to state: “The generation assets in question- those that are retained by the utilities – are PG&E’s hydroelectric system and its Diablo Canyon nuclear plant; Southern California Edison Company’s hydroelectric system, its interest in the San Onofre nuclear plant and its interest in the Mohave coal-fired plant in Arizona; and SDG&E’s interest in the San Onofre nuclear plant.” Again, the focus is on specific facilities that actually generate electricity.

Furthermore, the Commission has provided its interpretation of § 377 in the context of PG&E's application to market value and sell its Kern Facility. (Decision (D.) 01-04-004, 2001 Cal PUC LEXIS 414.) The Kern Facility was the site of a PG&E (non-operating) power plant. While the Commission rejected PG&E's proposed sale of the Kern Facility as being barred by statute, the discussion in D.01-04-004 supports the position that § 377 applies only to facilities that actually generate electricity. Specifically, the Commission states:

Given the unreasonable nature of the current wholesale market, and the Federal Energy Regulatory Commission's failure to act to correct the market problems, it is not in the public interest to divest regulated utility generation assets, where the owners of those divested assets could then sell power to ratepayers at unreasonable market prices, or manage power production and sales in ways that do not benefit California consumers. This concern has led the Legislature to preclude divestiture of utility generation assets until 2006, and led the Commission to defer approval of application to sell the Mohave, Palo Verde and Four Corners generation facilities. (D.01-04-004, 2001, Cal. PUC LEXIS 414, *4-5.)

The Commission's reasoning in rejecting the Kern Facility sale, with the emphasis on the ability to "sell power to ratepayers at unreasonable market prices," supports the argument that § 377 was not intended to preclude the sale of land that was not used directly or indirectly to generate electricity, such as the New Bridge Marina property. In the instant proceeding, the new owners of the New Bridge Marina property would not be able to use the assets to "then sell power to ratepayers at unreasonable market prices." Unlike the Mohave, Palo Verde and Four Corners facilities, the New Bridge Marina property does not directly or indirectly generate electricity. Whereas the Kern Facility was an actual power plant, (albeit a non-operating plant), the New Bridge Marina property is but a parcel of real property purchased to settle a claim of particulate

fallout from the Contra Costa power plant. Therefore, we find that § 377 does not apply to the proposed sale of the New Bridge Marina property.

6. California Environmental Quality Act (CEQA)

Neither PG&E nor Buyer seeks authority from the Commission to change the existing uses of the New Bridge Marina property. Thus, it can be seen with certainty that there is no possibility that the transfer of ownership of the property may have a significant effect on the environment. Accordingly, under CEQA Guideline 15061 (b)(3), the proposed sale is not subject to CEQA.

7. Ratemaking Treatment

At the request of the Office of Ratepayer Advocates (ORA), PG&E provided further details regarding the proposed accounting treatment in its May 29, 2000 supplement to the application. ORA does not oppose PG&E's proposed accounting treatment or the proposal to sell the property.

PG&E proposes to credit the TCBA with the net proceeds after accounting for transaction costs, taxes and net book value. Since sales proceeds will not yield a credit, the uneconomic costs will be amortized over the remaining months of the transition period. (D.97-11-074.)

Given that the property will sell at a loss, a tax benefit would accrue to PG&E. Exhibit B to the Application estimates this tax credit to be \$40,990. ORA has confirmed that PG&E's proposed treatment of the loss and its tax effects is proper and conforms with tax treatment used in association with the sale of the Sonoma County Geysers Units approved in D.99-04-026.

We agree with PG&E's proposed accounting and ratemaking treatment.

8. Conclusion

The property to be sold is no longer needed for PG&E's utility operations. And, sale of the property will remove these costs from the utility's rate base and

reduce operating expenses, resulting in lower rates for all ratepayers. Therefore, we conclude that sale of the property is in the public interest and the application should be granted.

9. Comments on Alternate Draft Decision

The alternate draft decision of Commissioner Kennedy in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were received from

10. Assignment of Proceeding

Loretta Lynch is the Assigned Commissioner and Bertram Patrick is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The New Bridge Marina property located in Antioch consists of a 0.321-acre non-nuclear generation-related property owned by PG&E.
2. Buyer has offered to purchase the New Bridge Marina property for \$1.00 and release PG&E from liabilities arising from the transfer.
3. Since the property to be sold is no longer needed for utility operations, the proposed sale is in the public interest.
4. Section 377 does not bar the proposed sale, since the property is not a “facility for the generation of electricity” or a “generation asset.”
5. The proposed sale of the New Bridge Marina property is not an activity subject to CEQA because it will not result in a direct or reasonably foreseeable indirect physical change in the environment.
6. The application is unopposed. Thus, a hearing is not needed.

Conclusion of Law

1. The application should be granted.

O R D E R

IT IS ORDERED that:

1. The application of Pacific Gas and Electric Company to sell the New Bridge Marina property is granted.
2. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.