

Decision 09-04-013 April 16, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U902E) for Approval Pursuant to Public Utilities Code Section 851 to Transfer 4.38 Acres of Right of Way to the Irvine Company, LLC.

Application 08-10-022
(Filed October 29, 2008)

**DECISION GRANTING APPROVAL PURSUANT
TO PUBLIC UTILITIES CODE SECTION 851
TO TRANSFER 4.38 ACRES OF RIGHT OF WAY
BY SAN DIEGO GAS & ELECTRIC COMPANY (U902E)
TO THE IRVINE COMPANY, LLC**

1. Summary

This decision grants the unopposed application¹ of San Diego Gas & Electric Company (SDG&E) for Commission authorization under Pub. Util. Code § 851² for SDG&E to transfer 4.38 acres of SDG&E's right of way in the City of San Diego to The Irvine Company, LLC.

¹ The application was filed on October 29, 2008. In Resolution ALJ 176-3076, dated November 6, 2008, we preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings are unnecessary. No protests to the application were filed.

² All statutory references are to the Public Utilities Code unless otherwise referenced.

2. Background

2.1. The Parties

SDG&E is a public utility corporation that provides gas and electric service in California and is subject to Commission regulation.

The Irvine Company, LLC. (Buyer) is a real estate developer that owns 13.93 acres of land (Adjacent Property) adjacent to SDG&E's right of way in the city of San Diego (Property) with plans to build 533 rental apartments thereon (Residential Project).

2.2. The Property

The Property is adjacent to a separate 13.93-acre parcel, already owned by the Buyer, on which the Buyer is planning to build 533 units of rental housing. The Residential Project has already been reviewed pursuant to the California Environmental Quality Act (CEQA) by the City of San Diego, which issued a Mitigated Negative Declaration (MND).

The Property is currently being used for a large paved and fenced parking lot, with the remainder of the Property being largely unimproved land with transmission towers on it. The Buyer intends to purchase and use the Property as follows: 2.2 acres for a public park area that will be dedicated to and owned by the City of San Diego; a 0.16-acre road turnaround for emergency vehicles; and 2.02 acres of permanently preserved open space.

2.3. The Property Transfer

The Buyer has offered to purchase the Property for \$950,000. On July 25, 2008, the parties entered into the purchase agreement subject to Commission's approval pursuant to Section 851. Under the terms of the purchase agreement, the Buyer will add the Property to its development, and pursuant to the approved project plans, will develop as follows: (1) 2.2 acres for

a public park area that will be dedicated to and owned by the City of San Diego; (2) a 0.16-acre road turnaround for emergency vehicles; and (3) 2.02 acres of permanently preserved open space. In addition, SDG&E will reserve the necessary easement rights over all of the Property for its current and future utility uses.

2.4. Environmental Review

The California Environmental Quality Act (Public Resources Code Section 21000, et seq., hereafter "CEQA"), 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, hereinafter "CEQA Guidelines," Section 15002.)

Since the above-referenced residential project on the Property and the Adjacent Property is subject to CEQA, the Commission must issue a discretionary decision without which the project cannot proceed (i.e., the Commission must act on the Section 851 application). The Commission must act as either a Lead or a 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)).

In this instance, the record shows that the City of San Diego (San Diego) is the Lead Agency for the proposed project. As described in SDG&E's Application, the development of both the Property and the Adjacent Property has been subject to CEQA review by San Diego. San Diego performed an Initial Study of the project on the Adjacent Property, found that the project could have significant environmental effects that could be mitigated to less than significant levels, and therefore certified a MND.

The Commission's role as a responsible agency under CEQA purposes concerns only the sale of 4.38 acres of right-of-way, the Property, which is categorically exempt from CEQA. The minor alteration of land needed to turn the existing parking lot into a park and to create an emergency vehicle access is exempt pursuant to Class 4 (CEQA Guideline Section 15304), which allows for minor grading and landscaping. Furthermore, land dedicated to park and open space (which essentially encompasses the entire Property) is also exempt under Class 25 (CEQA Guideline Section 15325(f)), which exempts from CEQA the: "Acquisition, sale, or other transfer to preserve open space or lands for park purposes." This describes the precise transaction that is before this Commission for approval.

In addition, while the MND identified and mitigated impacts relating to the construction on the Adjacent Property, the MND did not identify any significant environmental impacts on the Property that is the subject of this Application. Based on the MND, there are no significant environmental impacts that result from Commission's approval of the sale of the Property. Accordingly, the project before the Commission also qualifies for the "common sense" exemption under CEQA, as it can be seen with certainty that the project will not have a significant effect on the environment. (CEQA Guideline Section 15061(b)(3)).

Given that the Application meets the requirements of multiple categorical exemptions (and no exceptions to the exemptions apply), the requirements of CEQA have been satisfied.

We have reviewed and considered the Initial Study and MND prepared by San Diego and find that these documents are adequate for our decision-making purposes under CEQA.

2.5. Ratemaking Considerations

Accounting treatment for financial proceeds from SDG&E's sale of the Property to the Buyer will be distributed in accordance with the Commission's Gain on Sale allocation process as follows:

The Property has been exclusively as electric transmission property from 1958 to 1977. SDG&E estimates that 11.04% of the Property's use since 1977 was for electric transmission use, and states that gains from sale of such transmission property must be allocated according to the rules of the Federal Energy Regulatory Commission (FERC). Therefore, SDG&E will allocate the proceeds from the gains for the Property (100% from 1958 to 1977, and 11.04% from 1977 to the present), in accord with the rules of the FERC, and as generally outlined in SDG&E's herein application, Exhibit M.

The Property has been held in Common Plant since 1977, with 11.04% of the Property's use since 1977 being dedicated for electric transmission use and 88.96% of the Property's use since 1977 being dedicated for electric distribution and gas use. SDG&E will therefore allocate 88.96% of the proceeds from the gains for the Property since 1977 in accord with D.06-05-041 (as modified by D.06-12-043), which provides that 67% of those proceeds will be allocated to ratepayers and 33% of those proceed will be allocated to the shareholders, and as generally outlined in SDG&E's herein application, Exhibit M.

3. Discussion

Section 851 provides that no public utility "shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of . . . property necessary or useful in the performance of its duties to the public, . . . without first having secured from the commission an order authorizing it to do so."

The primary question for the Commission in Section 851 proceedings is whether the proposed 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.”³

We find that SDG&E’s proposed sale of the Property with the reservation of easements would serve the public interest. The proposed sale provides for express reservation of utility easement; thus, the sale will not interfere with SDG&E’s use of the property for utility purposes or with service to SDG&E customers. The proposed sale also provides benefits for the community and SDG&E ratepayers, and is in the public interest. The community will benefit because the northern portion of the Property will go from being a paved and fenced parking lot to being a public park, while the remainder will become a small emergency vehicle turnaround and permanently preserved open space. This benefits the local community by increasing public access to the Property, providing a new park, protecting open space, and improving emergency vehicle access. The ratepayers will benefit because they will receive money from the proceeds of The Buyer’s purchase of the Property. There will be no interference with the operation or maintenance of any utility services, and the new uses of the Property are fully compatible with the continued reliable provision of utility services because SDG&E reserves the necessary easement right over all of the Property for its current and future utility uses.

³ D.02-01-058.

4. Conclusion

For all of the foregoing reasons, we grant the application of SDG&E pursuant to Section 851, effective immediately.

5. Final Categorization and Waiver of Review Period

Based on our review of this application, we conclude that there is no need to alter the preliminary determinations as to categorization and need for a hearing made in Resolution ALJ 176-3076 (November 6, 2008). Moreover, since this proceeding is uncontested and we grant the relief granted, pursuant to Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is waived.

6. Assignment of Proceeding

Dian M. Grueneich is the assigned Commissioner and Kimberly H. Kim is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The proposed sale of the Property by SDG&E to Buyer will not interfere with SDG&E's current or future use of the Property for utility purpose or with service to SDG&E's customers.

2. Buyer is a real estate developer that owns Adjacent Property with plans to build the Residential Project and proposes to purchase the Property from SDG&E primarily to comply with certain project mitigation components of the Residential Project to build and dedicate a public park and open space preserve.

3. Under the terms of the proposed purchase agreement, the SDG&E will reserve the necessary easement rights over all of the Property for its current and future utility uses.

4. San Diego is the Lead Agency for the proposed Residential Project under CEQA.

5. San Diego conducted an Initial Study of the proposed Residential Project pursuant to CEQA.

6. In approving the proposed Residential Project, San Diego certified a MND.

7. The Commission's role of Responsible Agency for CEQA purposes concerns the sale of 4.38 acres of right-of-way, the Property.

8. The sale of the Property is categorically exempt from CEQA pursuant to CEQA Guidelines Sections 15304, 15325(f) and 15061(b)(3), and no exceptions to the exemptions apply.

9. We have reviewed and considered the Initial Study and MND prepared by San Diego and find that these documents are adequate for our decision-making purposes under CEQA.

10. The Lead Agency concluded that any and all potential impacts for the development of the Adjacent Property will be offset by the imposition of mitigation measures for land use/visual quality, traffic circulation and paleontological resources.

11. The proposed sale by SDG&E to the Buyer provides benefits for the community and SDG&E ratepayers because the Property will be made available to the local community by increasing public access to the Property, providing a new park, protecting open space, and improving emergency vehicle access.

12. The ratepayers will benefit from the proposed sale of the Property because they will receive money from the proceeds of the Buyer's purchase of the Property.

13. Accounting treatment for financial proceeds from SDG&E's sale of the Property to the Buyer will be distributed in accordance Section 2.5 of this decision.

Conclusions of Law

1. Consistent with Section 851, SDG&E's sale of the Property to the Buyer will serve the public interest and should be authorized.

2. The MND prepared by San Diego is adequate for the Commission's decision-making purposes as a Responsible Agency.

3. The proposed sale of the Property is categorically exempt from CEQA review pursuant to CEQA Guidelines Sections 15304, 15325(f) and 15061(b)(3), and no exceptions to the exemptions apply.

4. The decision should be effective today in order to allow the sale of the Property expeditiously.

O R D E R

IT IS ORDERED that:

1. San Diego Gas & Electric Company is authorized to sell, convey and transfer 4.38 acres of its right of way in the City of San Diego as described specifically in the application to The Irvine Company, LLC. (Buyer).

2. Application 08-10-022 is closed.

This order is effective today.

Dated April 16, 2009, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners