

Decision 09-07-035 July 30, 2009

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company and Lamar Central Outdoor, LLC seeking approval under P.U. Code Section 851 of Lamar Signboards Master License Agreement and related process for future approval of Specific Site Licenses thereunder. (U39E)

Application 08-10-014  
(Filed October 21, 2008)

**DECISION GRANTING APPROVAL TO PACIFIC GAS AND ELECTRIC COMPANY AND LAMAR CENTRAL OUTDOOR, LLC TO ENTER INTO A MASTER SIGNBOARD AGREEMENT PURSUANT TO PUBLIC UTILITIES CODE SECTION 851 AND DENYING THE REQUESTED APPROVAL OF PROPOSED RELATED PROCESS**

**1. Summary**

This decision grants approval of the unopposed application<sup>1</sup> of Pacific Gas and Electric Company (PG&E) and Lamar Central Outdoor, LLC (Lamar) for Commission authorization under Pub. Util. Code § 851<sup>2</sup> to enter into Lamar Signboards Master License Agreement (Master

---

<sup>1</sup> All references to application herein refer to Application 08-10-014, unless otherwise specified. The application was filed on October 21, 2008. In Resolution ALJ 176-3224 dated November 6, 2008, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings are unnecessary. No protests to the application were filed.

<sup>2</sup> All statutory references are to the Public Utilities Code unless otherwise referenced.

Agreement).<sup>3</sup> The Master Agreement outlines the framework for PG&E and Lamar to subsequently enter into specific site license(s) for installation of individual signboards and related equipment on PG&E land, buildings, and structures throughout PG&E's service territory in Commission's jurisdiction. This decision also denies the associated request for approval of a proposed expedited Commission review process for future specific filings for individual signboards under Section 851 and the Master Agreement.

## **2. Background**

### **2.1 The Parties**

PG&E is a public utility corporation that provides gas and electric service in California and is subject to Commission regulation. Lamar is a California Limited Liability Company operating an outdoor advertising business in California and a subsidiary of Lamar Advertising Company based in Baton Rouge, Louisiana, that owns over 150 outdoor advertising companies in more than 40 states and Puerto Rico.

### **2.2 The Property**

PG&E now and in the past has had several advertising signboards on its properties near major thoroughfares.<sup>4</sup> The properties at issue in this

---

<sup>3</sup> In its application, PG&E stated in its belief that the Master Agreement and subsequent site licenses qualify under General Order (GO) 69-C, as revocable licenses for a limited use that do not interfere with utility operations and can be quickly removed if necessary. PG&E also stated that this application should have been in the framework of an Advice Letter pursuant to Resolution ALJ-202 (ALJ-202) pilot program. However, upon several pre-filing meetings with Energy Division staff and in the interests of time, PG&E filed this application on a "non-precedential basis."

<sup>4</sup> See, e.g., Decision (D.) 04-07-021.

application and under the Master Agreement are PG&E's properties that PG&E has identified. There are approximately 300 additional potential outdoor advertising sites throughout its service territory that may be similarly suitable for and attractive to those interested in placing outdoor advertisement signboards, such as Lamar. Generally, those potential sites are located within 660 feet of a major thoroughfare and appear to meet other basic local and state requirements concerning outdoor advertising such as zoning and other land use restrictions as well as compliance with the California Outdoor Advertising Act, California Business and Professions Code Sections 5200, et seq.

### **2.3 The Master Agreement**

Under the Master Agreement, Lamar would pay PG&E an agreed-upon annual license fee, with the Master Agreement's term being ten (10) years from the date of the Commission's approval with potential renewal for two additional terms of five (5) years each.

Under the Master Agreement, Lamar and PG&E would enter into separate and site-specific license(s) to install individual signboards and related equipment on specific PG&E land, buildings, and structures. Lamar would first identify specific proposed PG&E sites for individual signboards. Lamar would thereafter prepare and submit to PG&E for approval a Site Application Form (SAF) containing detailed plans.<sup>5</sup>

Then PG&E, pursuant to the Master Agreement and specific site license(s), would license Lamar to use its property for constructing, maintaining, servicing, and removing signboards and licensee equipment,

---

<sup>5</sup> See Master Agreement filed with application, Attachment 1 - Exhibit B.

and would grant Lamar the non-exclusive, revocable right to access the site(s) to the extent and under the conditions specified in the SAF.

Notably included in the conditions is the requirement that the signboard may not interfere with utility operations. Thus, the Master Agreement has been structured to foreclose the possibility of adversely affecting electric or gas service to PG&E's customers, and PG&E has ensured sufficient oversight over Lamar's use to enable its facilities to be completely protected.

The Master Agreement also requires that no signs subsequently licensed pursuant to the Master Agreement may exceed a maximum of 14 feet high and 48 feet wide, with the most popular signboard sizes being 12' x 25', 10' x 30', and 14' x 48'. The majority of these signs will be held up by a freestanding monopole with a concrete footing of up to 48 inches in diameter. The sign face with the advertising copy will be bolted to the pole and the catwalks and lighting will be installed as part of the signboard design. PG&E's application indicates the construction of the proposed signboards generally will require digging a hole, ranging from 14' to 23' deep in the ground and from 36" to 48" in diameter that will be filled with concrete to support the pole that will hold up the advertising signboard. The exact hole depth and diameter measurement required for construction is unknown and will be dependent upon the size of the proposed sign. Both PG&E and Lamar anticipate no permanent changes to the PG&E properties from the construction of the proposed signboards.

With different site and signboard options available, the Master Agreement gives PG&E the discretion to review each SAF on case-by-case basis. Moreover, the Master Agreement provides several provisions for

revocability (termination), including Section 11.1.3 allowing termination by PG&E with 30 days written notice at PG&E's sole discretion if determined necessary for the conduct of PG&E's current or future utility operations.<sup>6</sup>

Finally, the Master Agreement requires Lamar to ensure that each licensed signboard fully comply with all local agency zoning ordinances and other requirements such as those of California Department of Transportation.<sup>7</sup>

#### **2.4 PG&E's Proposed Expedited Review Process**

PG&E requests that the Commission also approve an expedited review process for the three potential types of future site-specific Section 851 filings under the Master Agreement, as follows:

##### **CATEGORY 1: Where Statutory or Categorical Exemption is Shown (Request for approval within 45-90 days)**

For those future site licenses qualifying for a statutory or categorical exemption from California Environmental Quality Act (CEQA), as for minor alterations to PG&E owned lands, buildings, and other structures,

---

<sup>6</sup> See also: Section 11.1 providing additional grounds for PG&E termination; Section 11.3.2 (Termination by Either Party 180 days after the other party's receipt of written notice); and Section 11.7.2 providing that if PG&E, in its sole discretion, determines that any circumstance or condition relating to a signboard or Lamar's equipment requires immediate action to prevent or mitigate loss of, or damage to life, health, property or the interruption of PG&E's operations, whether or not resulting from Lamar's failure to perform any obligation hereunder, PG&E may take such action as it deems necessary without any prior notice to Lamar and Lamar shall reimburse PG&E for the cost thereof as Project Cost.

<sup>7</sup> Pursuant to Outdoor Advertising Act, California Business and Professions Code Sections 5200, et seq.

PG&E proposes to submit a Section 851 Advice Letter to the Commission under ALJ-202 or its successor.

Consistent with ALJ-202, the Commission would determine whether to approve or deny the request within 45 days of filing, if the filing was not protested and within 90 days of filing if it is protested:

- Where the Advice Letter is not protested by the 20-day deadline for protests, the Executive Director of the Energy Division shall issue an Executive Resolution approving the Advice Letter within 45 days of its filing date.
- Where the Advice Letter is protested, the Energy Division shall prepare a draft resolution within 30 days of the protest and place the draft resolution on the Commission's next decision conference agenda for a decision within 90 days of the Advice Letter's filings date.

**CATEGORY 2: Where Filing Attaches Documentation of Local Lead Agency's CEQA Findings  
(Request for approval within 90-120 days)**

For those future site licenses that will be subject to CEQA review by a local agency acting as the lead agency, PG&E proposes to file an Advice Letter including the local agency's CEQA documentation and findings, to enable the Commission to conduct its review as a responsible agency. PG&E argues such licenses should qualify for Advice Letter treatment. Alternatively, if the Commission does not share PG&E's view, PG&E requests approval, as follows:

**PG&E's Preferred Expedited Approval Process:**

PG&E will provide advance notice to Energy Division shortly after PG&E and Licensee enter into a specific site license agreement. Advance notice shall be provided in the form of a letter and the listing will include: 1) the proposed site(s); 2) a description of the location; 3) site zoning; 4) the nature of local review (if required); and 5) whether the site is subject to local

agency CEQA review. PG&E will periodically update this letter listing, approximately every quarter, for the purpose of keeping Energy Division apprised of local reviews for sites that will later become Section 851 filings with the Commission.

Once the necessary local review has been completed, PG&E will submit an Advice Letter including the underlying agency's CEQA review seeking Commission ratification of local agency decision as follows:

In each Advice Letter, PG&E would provide the Commission with specific information about the project such as: description of proposed project and environmental setting; sign schematics and construction work plan; information about all underlying CEQA findings and other local review. At that point:

- If no protest is received within the 20 day protest period, the Executive Director may issue an Executive Resolution of approval within 15 days following the protest period.
- If a protest is received, the Advice Letter will be processed within 60 days for a Commission Resolution within 45 days of the end of the protest period.
- If the Commission's decision on the Advice Letter does not ratify the lead agency's underlying environmental review, the project would be rejected without prejudice and refiled as an Application for further Commission review under Category 3, below.

**Alternative Expedited Approval Process:**

PG&E argues that even if the Commission believes that Category 2 transactions may require an application, the Commission should still *adopt a target timetable* for issuing its approval of such applications on an expedited basis. Specifically, PG&E requests approval **within 90 days**

**where no protest is received, and within 120 days where there is a protest.** PG&E requests this timetable apply regardless of whether an Advice Letter or application is used.

PG&E states it will work informally with the Energy Division and the Commission to help meet these proposed expedited deadlines or target dates to minimize undue delays, including holding pre-filing meetings to define desired showings as well as expedited responses to subsequent data requests. In addition, PG&E plans periodically to provide Energy Division with advance notice by letter of the sites for which site license agreement negotiations are completed. This listing will include: 1) the proposed site(s); 2) a description of the location; 3) site zoning; 4) the nature of local review (if required); and 5) whether the site is subject to local agency CEQA review. PG&E proposes to periodically update this letter, approximately every quarter, for the purpose of keeping Energy Division apprised of sites that will later become Section 851 filings with the Commission, pending completion of local reviews.

**CATEGORY 3: Where Site License is Neither CEQA Exempt nor are there Local Agency CEQA Findings**

In instances when there is no categorical or statutory exemption under CEQA and there are no other CEQA reviews or other processes (i.e., Commission is lead agency), PG&E proposes to file a Section 851 application including a proponent's environmental assessment to enable the Commission to initiate its environmental review. In these instances, PG&E acknowledges that the standard Commission Section 851 review process should apply. PG&E is not proposing a specific target for expedited review. However, PG&E urges for expeditious treatment and review of Category 3 types of Section 851 filings.

## **2.5 Environmental Review**

CEQA requires any California government agency approving a discretionary project to consider the environmental impacts of its decisions. (Cal. Pub. Res. Code, § 21080.) A project is an activity that “may cause either a direct physical change in the environment, or a reasonable foreseeable indirect physical change in the environment” and either (a) is directly undertaken by any public agency, (b) is supported by contracts, grants, subsidies, loans, or other forms of assistance from a public agency, or (c) involves the issuance of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies. (Cal. Pub. Res. Code, § 21065.)

The CEQA review process informs “the decision makers and the public about the potential, significant environmental effects of the proposed activities,” and allows the decision makers to consider the environmental consequences of projects that are subject to the Commission’s discretionary approval. (Title 14 of the California Code of Regulations, hereinafter “CEQA Guidelines,” Section 15002.)

Under the CEQA Guidelines (14 Cal. Code. Regs., § 15000, et seq.), where a project is to be approved by more than one public agency, only one agency becomes the “Lead Agency” and is responsible for providing the Environmental Impact Report (EIR) or negative declaration. (CEQA Guidelines, § 15050; Pub. Res. Code, § 21165.) “If the project will be carried out by a public agency, that agency shall be the Lead Agency.” (CEQA Guidelines, § 15051(a).) All other agencies with discretionary approval over the project are “Responsible Agencies.” (*Id.*, § 15381.)

To comply with CEQA, a Responsible Agency must consider the Lead Agency's EIR, negative declaration, or other CEQA analysis. However, the Lead Agency's determination is final and conclusive on the Responsible Agency unless the determination is challenged under Pub. Res. Code Section 21167, circumstances or conditions change, or the Responsible Agency assumes the Lead Agency role. (Pub. Res. Code, § 21080.1(a); CEQA Guidelines, § 15050(b)-(c).)

Here, PG&E's application seeks the Commission's approval of (1) the Master Agreement and (2) an expedited Commission review process for future Section 851 filings pursuant to the Master Agreement. Neither of the two components of the PG&E's application proposes a "project" as defined by CEQA. Neither, in and of itself, has any potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment within the meaning of CEQA Guideline 15378(a). Rather, approval of this application merely establishes a standardized set of terms and framework applicable to future unspecified individual site licenses. The site-specific information and associated individual leases which could trigger the definition of a "project" will be subject to later filings and Commission review through a subsequent Section 851 discretionary approval review process.

Several courts have recognized that the adoption of broad-brush or preliminary planning tools—tools that establish some type of roadmap or framework for processing future approvals—do not commit an agency to a particular course of action on a particular project and thus do not trigger CEQA review. For example, in *Environmental Council of Sacramento v. City*

*of Sacramento* (2006) 142 Cal.App.4th 1018, an agency adopted a Memorandum of Understanding (MOU) outlining a “joint vision” for processing future land-use agreements within a defined geographic area. Noting that the MOU did not approve any development, describe any specific development proposals, or change the existing land use designations, the court found that the MOU “is not a project within the meaning of CEQA, nor does it propose any specific project amenable to meaningful environmental review.” (*Id.* at 1033.) The court recognized the practical problem with attempting an environmental review before specific improvements are proposed and stated: “It is both impractical and useless to consider the multitude of potential environmental impacts before the financial feasibility is determined and the scope of the project is defined. . . . Far too little is known about the scope, the location, or the types of projects that might be proposed in the future to assist decision makers in evaluating any potential environmental trade offs.” (*Id.* at 1032; *see also Citizens to Enforce CEQA v. City of Rohnert Park* (2005) 131 Cal.App.4th 1594; (*Id.* at p. 1601); *see also City of Vernon v. Board of Harbor Commissioners* (1998) 63 Cal.App.4th 677, 690; and *Concerned McCloud Citizens v. McCloud Community Services District* (2007) 147 Cal.App.4th 181, 197 (district’s conceptual agreement to sell water was not a project under CEQA)).

Based upon the foregoing, the Commission finds that the application seeking approval of a Master Agreement and the related expedited review process does not present a “project” triggering a need for CEQA review and therefore determines that no CEQA review is required. However, PG&E shall comply with all local, state, and federal laws in constructing individual sign boards.

## **2.6 Ratemaking Considerations**

No specific sites have been identified by PG&E in the Master Agreement. However, pursuant to the Master Agreement, the sites will be located on non-depreciable property lands, buildings, and other structures that are used to provide gas and electricity service to PG&E customers and are currently included in PG&E's rate base. PG&E proposes that accounting treatment for all financial proceeds resulting from the Master Agreement be distributed as follows:

### **2.6.1 Natural Gas Transmission and Storage Property**

Proceeds from the license fees received for sites located on PG&E's natural gas transmission and storage property are subject to the Gas Accord,<sup>8</sup> and all costs associated with gas transmission property are subject to Gas Accord ratemaking for gas transmission service in PG&E's gas transmission and storage rate cases.<sup>9</sup> PG&E will account for site license fees as Gas Other Operating Revenue and will be used to reduce PG&E's revenue requirement consistent with conventional cost-of-service ratemaking.

---

<sup>8</sup> The term "Gas Accord" generally refers to the original settlement of the issues pertaining to Pacific Gas and Electric gas transmission and storage (GT&S) system in the Gas Accord Settlement Agreement that was adopted in D.97-08-055 [73 CPUC2d 754]. The Commission has twice modified D.97-08-055 and has since also adopted D.03-12-061 (Gas Accord II Settlement Agreement), D.04-12-050, (Gas Accord III Settlement Agreement), and D.07-09-045 (Gas Accord IV Settlement Agreement).

<sup>9</sup> *Id.*

### **2.6.2 Electric Transmission Property**

Proceeds from the license fees received for sites located on PG&E's electric transmission property are subject to Federal Energy Regulatory Commission (FERC) jurisdiction for ratemaking. All costs for PG&E's electric transmission system are now part of FERC ratemaking for transmission service in PG&E's transmission owner cases. PG&E will account for license fees related to electric transmission property pursuant to applicable FERC rules for accounting and ratemaking.

### **2.6.3 Electric Distribution Property**

Site license fees for sites located on PG&E's electric distribution property will be treated as Electric Other Operating Revenue and will be used to reduce PG&E's revenue requirement consistent with conventional cost-of-service ratemaking.

## **3. Discussion**

### **3.1 Public Interest and Adoption of Master Agreement**

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." In reviewing Section 851 applications, the Commission historically looked to public interest as its guiding post. While the minimal standard we consider in our review is that the transaction being proposed in a particular application is "*not adverse to the public interest*", we do foster and encourage transactions such as the one being proposed by PG&E here where the transaction is also "*in the public interest.*"

Here, the revenue PG&E could receive in site license fees is estimated at approximately \$1.3 million for the ten (10) year period with Lamar of this Master Agreement plus renewals depending on how many site licenses are entered and how early in the Master Agreement period they can be finalized. In turn, PG&E will allocate those financial proceeds in accordance with this decision which will result in direct and immediate positive value for ratepayers in all instances. In addition, there are no changes to PG&E's ratebase as a result of the proposed transaction. The proposed outdoor advertising signboard uses permitted through site licenses under the Master Agreement allow a compatible productive use of utility property without interfering with utility operations or the provision of utility services to the public.

In support of its application, PG&E also filed a valuation analysis to serve as the basis for the estimated revenue which will result from the Master Agreement. The analysis was performed for PG&E by SignValue, Inc., an independent full-service valuation and advisory services firm specializing in valuation of outdoor advertising commonly referred to as billboards. (See Attachment 2 to application.)

Although the analysis represents only five particular signs based on a limited set of site information and assumptions, it does suggest that individual site licenses can be expected to yield license fees at or above-but never below-fair market value for such uses of real property.

Accordingly, we believe the Master Agreement sets forth terms and conditions that will ensure the license or rental fees paid to PG&E will yield reasonable future site license proceeds. All such license fees or rents represent a benefit to PG&E's ratepayers.

Based on the foregoing, the Commission finds that PG&E's proposed Master Agreement provides benefits for the PG&E ratepayers and would serve the public interest. The proposed Master Agreement also effectively ensures that Lamar's use of PG&E's properties not interfere with and be compatible with the utility's use of such properties, and will not interfere with service to PG&E customers. We therefore find that PG&E's proposed Master Agreement meet and exceed the minimum legal standard that its proposal not be adverse to the public interest. It is in the public interest.

### **3.2 Expedited Commission Review Process**

PG&E's request for adoption of an expedited review and approval process must be considered in light of existing statutory requirements and procedures as well as the goal of achieving decision-making processes which are efficient, transparent, and simple. Having balanced these considerations, PG&E's request for approval of an expedited Commission review process for its future site-specific Section 851 filings is denied, as discussed below.

Both independently and in response to 2006 statutory amendments to Section 851, the Commission is and has been proactively engaged in efforts to streamline the Section 851 review process.<sup>10</sup> On August 23, 2007,

---

<sup>10</sup> After our adoption of Resolution ALJ-186, in August 2005, the Legislature adopted Assembly Bill (AB) 736 (Stats 2005, ch. 370, section 1), effective January 1, 2006, which amended Section 851. These amendments to Section 851 authorize utilities to obtain Commission approval of transactions involving transfers or disposition of property interests that are valued at \$5 million or less by filing an advice letter and obtaining a Commission resolution approving the transaction, rather than filing a formal application and seeking a Commission decision. Under AB 736, utilities must continue to file formal Section 851 applications for transactions valued at over \$5 million.

the Commission adopted Resolution ALJ-202 (extending and modifying the Section 851 pilot process previously established in Resolution ALJ-186, adopted August 25, 2005) which sets forth a pilot expedited Section 851 review process. That process designed specifically to “expedite and simplify” the Commission’s Section 851 review process, where possible.

Under Section 851, as amended, and Resolution ALJ-202, an advice letter process under Commission’s GO 96-B is available to any Section 851 applicant when the proposed transaction involves property valued at or below \$5 million and the Commission is neither a responsible nor a lead agency under CEQA. The rationale for the ALJ-202 pilot program was to expedite and simplify the Commission's review and approval of non-controversial Section 851 transactions involving the transfer or conveyance of interests in utility property that did not require environmental review by the Commission under CEQA, and did not warrant more extensive review by the Commission through the formal application process.

In Resolution ALJ-202, we examined the Section 851 proceedings, and we balanced the public interest served by expediency in those proceedings against the Commission’s statutory responsibilities when fulfilling its role as lead or responsible agency during the CEQA review process. Specifically, Section 853(d) provides:

...It is the further intent of the Legislature that the commission maintain all of its oversight and review responsibilities subject to the California Environmental Quality Act, and that public utility transactions that jurisdictionally trigger a review under the act should not qualify for expedited advice letter treatment pursuant to this article. [Emphasis added.]

In applying the direction under Section 853(d), Resolution ALJ-202 concluded:

... if a transaction involving the transfer or disposition of utility property requires the Commission to conduct environmental review as either a Lead Agency or a Responsible Agency[ ] under CEQA, the advice letter process does not apply, and the utility must file a formal Section 851 application to seek our approval of the transaction.[] We believe that a formal application is required when the Commission is acting as either the Lead Agency or as a Responsible Agency, because even as a Responsible Agency, the Commission has significant duties under CEQA to review and address the environmental impacts of the project. [Citations omitted.] [Emphasis added.]

The Commission also determined in Resolution ALJ-202 that, based upon comments received in response to the pilot program and the Commission's "continued experience with the pilot program," the Commission may revisit and further modify that expedited Section 851 review process. That ALJ-202 pilot program is currently under way and the pilot period will not end for at least another year.

Here, PG&E's proposed expedited review and approval is problematic. For example, PG&E's preferred advice letter approach under Category 2 directly conflicts with the procedural requirement for an application under Section 853(d) and Resolution ALJ-202 when the Commission is acting as a responsible agency under CEQA.

In addition, the proposed timelines for advice letter approval under PG&E's Categories 1 and 2 filings would further expedite the existing process under Section 851 and the ALJ-202 pilot program. Under Section 851 and Resolution ALJ-202, the Commission must approve or

deny uncontested and complete advice letters within 120 days. PG&E's proposal here would shorten that already expedited review timeframe to 45 days (up to 90 days when protests are filed). Here, PG&E asks the Commission to create yet another subset of expedited review processes which are inconsistent with already expedited pilot processes set forth and being actively carried out by the Commission under ALJ-202 pilot program. Such second subset of expedited processes creates confusion, rather than simplification which is the goal of Section 851 and Resolution ALJ-202.

Finally, because the ALJ-202 pilot program is still underway and the pilot program experiences are yet to be fully examined, we find it premature to set an even more ambitious review timelines at this juncture.

PG&E argues its proposal promotes further efficiency and will allow PG&E to consummate the individual signboard agreements with Lamar in a more timely fashion than PG&E would be able to under the current Commission process. In its application, PG&E explains that the signboard market is fast-paced, time-sensitive and competitive. PG&E therefore contends timely Commission review and finalization of the signboard site licenses are essential for PG&E to stay competitive and profitable in that market where its competitors may have alternative available site, not subject to the Commission's Section 851 review process. Commission staff therefore should remain mindful of these concerns and avoid all undue delays to expedite the Section 851 reviews whenever possible. However, the timeframes we implement must also be practicable and allow sufficient time for a thorough and meaningful review. We are therefore hesitant to adopt an even more ambitious review timeline here because we find that

complying with our obligations under CEQA should not be artificially constrained by unrealistic expedited deadlines.

Based on the foregoing, PG&E's request for approval of its proposed further expedited review process for its future site-specific Section 851 filings under the Master Agreement is denied. In instances where an application is not required, PG&E should seek expedited advice letter review consistent with Section 851 and Resolution ALJ-202. Consistent with Section 851, as amended, and Resolution ALJ-202, we direct and expect staff will undertake whatever steps are necessary to avoid undue delays and we encourage all practicable improvements towards efficiency in review process.

#### **4. Motion to Seal Confidential Records**

In accordance with Rules 11.1 and 11.5 of the Commission's Rules of Practice and Procedure, the Commission has considered the Motion of PG&E, filed October 21, 2008, for Leave to File Confidential Material Under Seal (Motion) -- namely certain pricing information in the confidential, unredacted version of the Master Agreement attached to PG&E's application.

Certain pricing information in the Master Agreement is confidential and commercially sensitive, and would be harmful to ratepayer interests as well as put PG&E and Lamar at a business disadvantage if it became publicly available during PG&E's ongoing negotiations with other signboard providers. Section 583 and GO 66-C and other Commission decisions support protection of such confidential, commercially sensitive pricing information. Protection is appropriate in this case to ensure that this confidential and commercially sensitive information is not obtained

and used by any signboard provider competitors with whom PG&E is in ongoing negotiations for other potential additional master license agreements so that PG&E can negotiate terms most favorable to ratepayer interests.

Based on the foregoing, the Commission grants PG&E's Motion to File Under Seal as detailed in the Order section of this decision.

## **5. Conclusion**

For all of the foregoing reasons, we approve PG&E's request to enter into the Master License Agreement pursuant to Section 851, and deny PG&E's proposed expedited review and approval process for future filings for individual signboards under Section 851 and the Master Agreement.

## **6. Categorization and Need for Hearing**

In Resolution ALJ 176-3224 dated November 6, 2008, the Commission preliminarily categorized this application as Ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. It is not necessary to disturb the preliminary determinations.

## **7. Comments on Proposed Decision**

The proposed decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure.

On July 16, 2009, PG&E filed its opening comment requesting modifications to the proposed decision of ALJ, issued on June 26, 2009. (Opening Comment.) The Commission has not received any reply comment.

In general, PG&E supports the proposed decision to adopt the Master Agreement. However, PG&E proposes the following:

1. The decision should include discussion of PG&E's contention that the fast-paced signboard market is time-sensitive, and delays therefore would be detrimental to potential signboard deals;
2. The decision should reflect a clear commitment of the Commission to review the Section 851 review process in the future;
3. The decision should order that the Protective Order remain in effect for three years, and not one year, as PG&E originally requested in its motion;
4. The decision should indicate that the site license fees for electric distribution property should be treated as other operating revenues, and not gain of sales; and
5. The final decision's recitation of the Section 851 standard should read "*not adverse to the public interest,*" and not "*in the public interest.*"

First, we are not entirely persuaded by the Opening Comment recommending additional language concerning time-sensitiveness of the signboard market. We do not find that language to be essential to the decision. To be fair, however, PG&E's application did indicate that to be one of PG&E's main basis for seeking an approval of the proposed expedited Section 851 review process. As such, the modified version of the PG&E's proposed additional language has been incorporated in this decision to fully and correctly reflect PG&E's application which sought approval of the proposed expedited Commission review process in recognition of the fast-paced and time-sensitive nature of the signboard market.

Second, the Opening Comment requesting that the decision reflect a clearer commitment of the Commission to review the Section 851 process in the future is superfluous and therefore denied. The decision adequately details the Commission's proactive interest in this issue and expressly indicates that the Resolution ALJ-202 pilot program is underway to streamline that process. It is also implicit in this decision and explicit in the Resolution ALJ-202 that once the 851 pilot program period ends, the Commission will be revisiting the issue. Beyond that, as suggested by PG&E, if current or future legislative actions result in changes to Sections 851 and/or 853, the Commission must and therefore will review and modify its processes in accordance with any such changes. Thus, PG&E's the proposed additional language will not be adopted in this decision.

Third, the Protective Order will be in effect for one year as originally requested by PG&E in its Motion. PG&E's Motion specifically requested one-year protective period, and while it may be inconvenient for PG&E to file subsequent motion of renewal to extend that time frame, the Motion properly before the Commission in this proceeding sought one year protection. Therefore, this decision confirms that the Protective Order should remain in effect for one year, unless a subsequent motion is granted to extend that time frame as outlined in the Order section of this decision.

PG&E's final two points (items 4 and 5, above) in the Opening Comment (concerning the ratemaking treatment of the site license fees for electric distribution property and recitation of the Section 851 standard as "*not adverse to the public interest*") are correct. This decision adopts those corrections as proposed by PG&E.

## **8. Assignment of Proceeding**

Rachelle B. Chong is the assigned Commissioner and Kimberly H. Kim is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. Lamar is a California Limited Liability Company operating an outdoor advertising business in California.
2. The terms of the Master Agreement expressly provide that Lamar's use and activities relating to its signboards must be compatible with and may not interfere with PG&E's future use and operation on its properties.
3. Under the terms of the Master Agreement, PG&E could receive site license fee revenue, estimated at \$1.3 million, for the 10-year period plus renewals depending on how many site licenses are entered and how early in the Master Agreement period they can be finalized.
4. Proceeds from license fees associated with PG&E's electric transmission property are subject to Federal Energy Regulatory Commission jurisdiction.
5. Proceeds from license fees associated with PG&E's electric distribution property will be treated as Electric Other Operating Revenue and will be used to reduce PG&E's revenue requirement consistent with conventional cost-of-service ratemaking.
6. PG&E's request for approval of an expedited review process contains three categories of licenses or transactions.
7. California Public Resources Code Section 21065 defines a "project" as an activity that "may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment."

8. In evaluating Section 851 applications, the Commission generally considers, among other things, whether the proposed transaction would be adverse to the public interest.

9. Section 851 and Resolution ALJ-202 prescribe the existing expedited review and approval process for advice letters filed in connection with Section 851.

10. Section 853(d) and Resolution ALJ-202 require an application to be filed when a proposed transaction will trigger Commission review under CEQA.

11. The ALJ-202 pilot program for expedited review and approval of Section 851 advice letters is still underway.

12. Pursuant to the Master Agreement, the sites will be located on non-depreciable property lands, buildings, and other structures that are used to provide gas and electricity to PG&E customers and are currently included in PG&E's rate base.

### **Conclusions of Law**

1. PG&E's proposed Master Agreement is consistent with Section 851 and would not be adverse to the public interest.

2. The Master Agreement is not a "project" within the meaning of Public Resources Code Section 21065.

3. The proposed expedited process for review and approval of Section 851 advice letters deviates from the process established under Section 851 and Resolution ALJ-202.

4. PG&E's proposed Category 1 filings should follow the advice letter process set forth in Resolution ALJ-202.

5. PG&E's proposed Categories 2 and 3 filings should follow the formal Section 851 application process to seek Commission approval of the transaction and afford the Commission opportunity to conduct its review in compliance with CEQA.

6. PG&E's Motion for Leave to File Confidential Material Under Seal should be granted as set forth in the order below.

7. CEQA review is not required.

8. Accounting treatment for all financial proceeds resulting from the Master Agreement should be distributed as set forth in the Order section of this decision.

## **O R D E R**

**IT IS ORDERED** that:

1. Pacific Gas and Electric Company is authorized to enter into Lamar Signboards Master License Agreement.

2. Pacific Gas and Electric Company's request for approval of an expedited Commission's review process for future specific filings for individual signboards under Section 851 and Lamar Signboards Master License Agreement is denied.

3. Pacific Gas and Electric Company and the Energy Division are directed to work informally to eliminate undue delays in the Section 851 review process. Activities should include:

- Holding pre-filing meetings to define desired showings.
- Expediting responses to subsequent data requests, when feasible.
- Providing Energy Division with quarterly updates and advance notice letters of the sites for which site license

agreement negotiations are completed, which sets forth the listing which shows: 1) the proposed site(s); 2) a description of the location; 3) site zoning; 4) the nature of local review (if required); and 5) whether the site is subject to local agency California Environmental Quality Act review to keep Energy Division apprized of sites that will later become Section 851 filings with the Commission, pending completion of local reviews.

4. Pacific Gas and Electric Company's Motion for Leave to File Confidential Material Under Seal is granted as follows:

- a. The protected materials in the confidential, unredacted version of the above-referenced application are described in the table attached as Attachment 1 to the Motion for Leave to File Confidential Material Under Seal.
- b. The confidential, unredacted version of this information shall remain under seal for one year and shall not be made accessible or disclosed to anyone other than Commission staff, except on the further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge or the Administrative Law Judge then designated as Law and Motion Judge.
- c. If Pacific Gas and Electric Company believes that further protection of this information is needed, it may file a motion stating justification for further withholding the material from public inspection. This motion shall be filed no later than 30 days before the expiration of this order.

5. Accounting treatment for all financial proceeds resulting from the Master Agreement will be distributed as follows:

- a. Proceeds from the license fees received for sites located on Pacific Gas and Electric Company's natural gas transmission and storage property are subject to the Gas Accord, and all costs associated with gas transmission property are subject to Gas Accord ratemaking for gas transmission service in Pacific Gas and Electric Company's

gas transmission and storage rate cases.<sup>11</sup> Pacific Gas and Electric Company will account for site license fees as Gas Other Operating Revenue will be used to reduce Pacific Gas and Electric Company's revenue requirement consistent with conventional cost-of-service ratemaking.

- b. Proceeds from the license fees received for sites located on Pacific Gas and Electric Company's electric transmission property are subject to Federal Energy Regulatory Commission jurisdiction for ratemaking. All costs for Pacific Gas and Electric Company's electric transmission system are now part of Federal Energy Regulatory Commission ratemaking for transmission service in Pacific Gas and Electric Company's transmission owner cases. Pacific Gas and Electric Company will account for license fees related to electric transmission property pursuant to applicable Federal Energy Regulatory Commission rules for accounting and ratemaking.
  - c. Pacific Gas and Electric Company will account for site license fees for sites located on Pacific Gas and Electric Company's electric distribution property as Electric Other Operating Revenue and will be used to reduce Pacific Gas and Electric Company's revenue requirement consistent with conventional cost-of-service ratemaking.
6. Application 08-10-014 is closed.

This order is effective today.

Dated July 30, 2009, at San Francisco, California.

---

<sup>11</sup> The term "Gas Accord" generally refers to the original settlement of the issues pertaining to Pacific gas and Electric gas transmission and storage (GT&S) system in the Gas Accord Settlement Agreement that was adopted in D.97-08-055 [73 CPUC2d 754]. The Commission has since twice modified D.97-08-055 and adopted D.03-12-061 (Gas Accord II Settlement Agreement), D.04-12-050, (Gas Accord III Settlement Agreement), and D.07-09-045 (Gas Accord IV Settlement Agreement).

MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
TIMOTHY ALAN SIMON  
Commissioners