

Decision 09-12-010 December 3, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U39E) and Marina Coast Water District for an Order Authorizing, Pursuant to Public Utilities Code Section 851, the Grant of an Easement to Install, Use and Maintain an Underground Recycled Water Pipeline.

Application 09-09-002
(Filed September 3, 2009)

DECISION AUTHORIZING PACIFIC GAS AND ELECTRIC COMPANY TO GRANT MARINA COAST WATER DISTRICT AN EASEMENT FOR A RECYCLED WATER PIPELINE

Summary

This decision grants the application of Pacific Gas and Electric Company (PG&E) and Marina Coast Water District (MCWD) for an order pursuant to Public Utilities Code Section 851¹ authorizing PG&E to grant a permanent, non-exclusive easement to MCWD for the installation, maintenance, and use of a recycled water pipeline and associated appurtenances on a portion of PG&E's property, located at the end of Crescent Street in the City of Marina, Monterey County (Property).

In granting this easement, the Commission is a Responsible Agency under the California Environmental Quality Act (CEQA).² CEQA requires the

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

² Public Resources Code Sections 21000, *et seq.*

Commission to consider the Lead Agency's environmental documents before acting upon or approving the project.³ We have reviewed MCWD's environmental documents and find them to be adequate for our decision-making purposes and we adopt MCWD's Environmental Impact Report.

Application 09-09-002 is closed.

Background

On September 3, 2009, Pacific Gas and Electric Company (PG&E) and Marina Coast Water District (MCWD) (together, applicants) filed this application. On September 21, 2009, applicants served local jurisdictions identified in the application and filed an amended service list.

In the application:

PG&E and MCWD request permission for PG&E to grant MCWD a permanent, non-exclusive easement over PG&E fee property to construct and maintain an approximately forty (40) foot-long section twenty (20) inch-diameter ductile iron, recycled water pipeline ("Pipeline").⁴

The applicants state:

This easement will facilitate and support the implementation of the Marina Coast Water District Regional Urban Recycled Water project ("RWP"). The RWP will include the construction of a recycled water distribution system to provide recycled water from Monterey Regional Water Pollution control Agency's (MRWPCA) existing Saninas Valley Reclamation Project tertiary wastewater treatment facility (SVRP) to urban users within the

³ CEQA Guidelines Section 15050(b). The specific activities that must be conducted by a Responsible Agency are contained in CEQA Guidelines Section 15096.

⁴ Application of PG&E and MCWD for an Order Authorizing, pursuant to Public Utilities Code Section 851, the Grant of an Easement to Install, Use and Maintain an Underground Recycled Water Pipeline (Application), September 3, 2009 at 2.

Cities of Marina, Seaside, and Del Rey Oaks, and the County of Monterey, a critical water infrastructure improvement that provides clear public benefits.⁵

In return for granting the easement, MCWD has agreed to pay PG&E two thousand dollars (\$2,000) as the fair market value for the proposed easement.⁶ PG&E proposes to account for the one-time easement fee as Other Operating Revenue, used to reduce the distribution revenue requirements in future General Rate Cases.⁷ PG&E notes that no PG&E property is being sold or disposed of, and as such, there are no changes to PG&E's rate base as a result of granting the proposed easement.⁸

On September 10, 2009, Resolution ALJ 176-3240 affirmed the preliminary ruling that categorized this proceeding as ratesetting and determined that there was no need for hearings.

There were no protests to this application.

Terms of the Proposed Easement

PG&E and MCWD have filed a proposed easement agreement with the application. Under the proposed agreement, PG&E grants MCWD a "non-exclusive easement to excavate for, construct, install, repair, replace (with the initial or any smaller size), remove, maintain and use a single water pipe line not exceeding twenty inches (20") in diameter, with necessary valves and other appliances and fittings, and devices for controlling electrolysis for use in

⁵ *Id.*

⁶ *Id.* at 10.

⁷ *Id.*

⁸ *Id.*

connection with said pipe line ... ”⁹ In addition, the easement grants MCWD the right to ingress and egress, as well as the ability to use a portion of the Property for constructing improvements.

The easement proposes traditional restrictions that limit use by the grantee (MCWD) and prohibit the assignment of the easement by the grantee without PG&E’s prior written consent. The easement reserves rights for PG&E to restrict access to the Property in emergencies. The easement also imposes conditions on the grantee, including placing responsibility on the grantee for compliance with CEQA and other laws affecting its project.

The easement also requires that MCWD indemnify PG&E against any claims that may arise from the water pipeline project. The easement becomes effective only after the Commission approves the easement. In addition, MCWD must obtain insurance, including workers compensation, commercial general liability and business auto that covers work done on the PG&E property.

Proposed Ratemaking

As noted above, PG&E proposes to credit \$2,000 received from MCWD for the easement to Other Operating Revenue. As a result of this action, the funds will reduce the distribution revenue requirements in future General Rate Cases.

Environmental Review

CEQA applies to discretionary projects to be carried out or approved by public agencies.¹⁰ A basic purpose of CEQA is to “inform governmental

⁹ *Id.* at Exhibit A, p. 2.

¹⁰ Public Resources Code Sections 21000, *et seq.*

decision-makers and the public about the potential, significant environmental effects of the proposed activities.”¹¹

Because the Commission must act on the Section 851 application and issue a discretionary decision without which the project cannot proceed, then, pursuant to CEQA, the Commission must act as either a Lead or a Responsible Agency.

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 contrast, the Responsible Agency must consider the Lead Agency’s environmental documents and findings before approving a project. (CEQA Guidelines Section 15050(b).)¹² In this case, MCWD is the Lead Agency. The Commission is a Responsible Agency for this proposed project. As such, the Commission must consider the Lead Agency’s environmental documents and findings before acting upon or approving the project. (CEQA Guidelines Section 15050(b).)

MCWD completed a Draft Environmental Impact Report (DEIR) pursuant to CEQA titled “Draft Environmental Impact Report Regional Urban Water Augmentation Project” – State Clearinghouse Number 2003081142. A Final EIR (FEIR) was certified in October of 2004, and the overall project was approved in May of 2005. The EIR analyzed the impacts associated with Marina Coast Water District Regional Urban Water Augmentation Project (RUWAP), including both

¹¹ Title 14 of the California Code of Regulations (hereafter, CEQA Guidelines), Section 15002.

¹² The specific activities that must be conducted by a Responsible Agency are contained in CEQA Guidelines Section 15096.

recycled water and a desalination component. The FEIR concluded that the construction impacts of the RUWAP, while significant, could be mitigated to less than significant levels. In addition, MCWD prepared an Addendum to the FEIR in October 2006, pursuant to CEQA Guidelines Section 15164. The Addendum concluded that while significant impacts were present in nine of the seventeen impact areas, each of these significant impacts could be mitigated to less than significant levels. The Application includes a summary of significant impact areas and mitigation measures as identified in the Addendum, as follows:

1. Mitigation Measures relating to Aesthetics (Page 16);
2. Mitigation Measures relating to Air Quality (Page 17);
3. Mitigation Measures relating to Biological Resources (Page 18);
4. Mitigation Measures relating to Cultural Resources (Page 20);
5. Mitigation Measures relating to Geochemical and Geologic Hazard (Page 20);
6. Mitigation Measures relating to Hazards and Hazardous Material (Page 21);
7. Mitigation Measures relating to Noise (Page 22);
8. Mitigation Measures relating to Public Service and Recreation (Page 23); and
9. Mitigation Measures relating to Traffic and Circulation (Page 24).¹³

Discussion

Section 851 provides that no public utility “shall ... encumber the whole or any part of ... property necessary or useful in the performance of its duties to the public,” without first having obtained Commission approval. Since the easement

¹³ Application at 5-6.

proposed to be conveyed to MCWD will be an encumbrance on PG&E Property, we apply Section 851 in considering the application.¹⁴

The primary question for the Commission in Section 851 proceedings is whether the proposed transaction is in the public interest. The public interest is served when utility property is used for other productive purposes without interfering with the utility's operations or affecting service to utility customers.¹⁵ In reviewing a Section 851 application, the Commission may "take such action, as condition to the transfer, as the public interest may require."¹⁶

We find that the proposed easement to MCWD is in the public interest. The proposed easement will not interfere with PG&E's use of the Property for its operations or with service to PG&E customers, and will be utilized in a manner consistent with legal and regulatory requirements.

We also approve the proposed ratemaking treatment for the \$2,000 compensation that MCWD will pay PG&E for the easement.

We have reviewed MCWD's environmental documents, which were submitted and/or referenced as Attachment B to the Application, and find them to be adequate for our decision-making purposes. The FEIR found significant environmental impacts that could be mitigated to less than significant levels in the following areas: aesthetics, air quality, biological resources, cultural resources, geochemical and geologic hazard, hazards and hazardous material, noise, public service and recreation, and traffic and circulation. With respect to

¹⁴ Decision (D.) 01-08-069.

¹⁵ D.00-07-010 at 6.

¹⁶ D.3320, 10 CRRC 56, 63.

these significant environmental impacts, we find that MCWD has adopted feasible mitigations and has reasonably concluded that the specified mitigation measures will either eliminate or substantially reduce the impacts to less than significant levels. Therefore, for purposes of our Section 851 review, we adopt MCWD's mitigation plan applicable to all potentially significant impacts, and note that Section "4(a) Construction Improvements" of the subject easement binds MCWD to the implementation of these mitigation measures.

Categorization and Need for Hearing

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 hearing made in Resolution ALJ 176-3240 of September 10, 2009.

Waiver of Comment Period

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

Assignment of Proceeding

Dian M. Grueneich is the assigned Commissioner and Janice Grau is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The proposed easement located at the end of Crescent Street in the City of Marina, Monterey County, will enable MCWD to install a recycled water pipeline to implement the Marina Coast Water District Regional Urban Recycled Water project.

2. The proposed easement will not interfere with PG&E's use of the Property or with service to PG&E customers, and will be utilized in a manner consistent with legal and regulatory requirements.

3. MCWD is the Lead Agency for the proposed project under CEQA.

4. MCWD has conducted an environmental review pursuant to CEQA that includes the Property site.

5. The Commission is a Responsible Agency in this matter under CEQA.

6. The FEIR found significant environmental impacts that could be mitigated to less than significant levels in the following areas: aesthetics, air quality, biological resources, cultural resources, geochemical and geologic hazard, hazards and hazardous material, noise, public service and recreation, and traffic and circulation.

7. MCWD has adopted feasible mitigations and has reasonably concluded that the specified mitigation measures will either eliminate or substantially reduce the impacts to less than significant levels.

8. All revenue from the easement will flow to Other Operating Revenue and will be used to reduce the distribution revenue requirements in future General Rate Cases.

9. There is no known opposition to granting the requested easement.

Conclusions of Law

1. The FEIR adopted by MCWD, which includes the construction of the recycled water pipe for which this easement is requested, is adequate for the Commission's decision-making purposes under CEQA. Consistent with MCWD's findings and determinations, significant environmental effects resulting from the project can be mitigated to insignificant levels in the following areas: aesthetics, air quality, biological resources, cultural resources, geochemical

and geologic hazard, hazards and hazardous material, noise, public service and recreation, and traffic and circulation.

2. We adopt MCWD's mitigation plan applicable to all potentially significant impacts and note that Section "4(a) Construction Improvements" of the subject easement binds MCWD to the implementation of these mitigation measures.

3. Approving the requested easement is in the public interest.

4. The preliminary determination as to categorization and need for a hearing made in Resolution ALJ 176-3240, should be approved.

5. The proposed ratemaking and accounting treatment for the \$2,000 easement fee is reasonable.

6. The Application should be granted as set forth in the following Order.

7. This decision should be effective today in order to allow the easement to be conveyed to MCWD expeditiously.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company is authorized pursuant to Public Utilities Code Section 851 to convey a permanent, non-exclusive easement to Marina Coast Water District for the construction of the proposed recycled water pipeline on a portion of Pacific Gas and Electric Company's property, located at the end of Crescent Street in the City of Marina, Monterey County. When the final easement documents are executed, Pacific Gas and Electric Company shall submit a copy by a Tier 1 advice letter filing within sixty (60) days of this order.

2. The \$2,000 revenue from the easement granted by Pacific Gas and Electric Company to Marina Coast Water District shall be treated as Other Operating

Revenue and should be used to reduce Pacific Gas and Electric Company's distribution revenue requirements in future General Rate Cases.

3. Application 09-09-002 is closed.

This order is effective today.

Dated December 3, 2009, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners