Decision 02-01-058 January 23, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval under Section 851 For An Easement from PG&E Allowing CPN Pipeline to Install and Maintain Two Underground Gas Pipelines and for Related Access. (U 39 M)	Application 01-10-041 (Filed October 25, 2001)

DECISION GRANTING APPROVAL UNDER PUBLIC UTILITIES CODE SECTION 851 FOR CONVEYANCE OF AN EASEMENT BY PG&E TO CPN PIPELINE TO INSTALL AND MAINTAIN TWO UNDERGROUND GAS PIPELINES AND FOR RELATED ACCESS

1. Summary

This decision grants the unopposed application[1] of Pacific Gas and Electric Company (PG&E) for Commission authorization under Pub. Util. Code § 851[2] for PG&E to convey an easement across its electric transmission property located in the area of Pittsburgh, California, to CPN Pipeline Company (CPN). This easement will enable CPN to install gas pipelines, which will form a loop in the

[1] The application was filed on October 25, 2001. In Resolution ALJ 176-3076 dated November 29, 2001, 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.

existing Sacramento River Gathering System (SRGS) pipeline[3] in order to operate a new pigging station[4] on adjacent property not owned by PG&E and to interconnect with the SRGS pipeline. The purpose of the project is to increase gas service reliability for both the Delta Energy Center (DEC) and the Los Medanos Energy Center (Los Medanos).

Our decision on this matter is expedited based on PG&E's representations that in order for CPN to meet its construction schedule and to minimize the time that the SRGS pipeline is out of service, CPN must obtain this easement by February 1, 2002.

2. Background

A. The Parties

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

CPN is a Delaware limited liability company corporation and a subsidiary of Calpine Natural Gas Company (Calpine).

B. The Project

In February 2000, the California Energy Commission (CEC) granted final approval of the DEC facility. On March 20, 2001, Delta Energy filed a petition with the CEC seeking approval of amendments of its license for the DEC to permit two additional natural gas interconnections, in order to increase plant reliability and gas procurement flexibility for both DEC and Los Medanos. This

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[3] The SRGS pipeline is a 10-inch diameter pipeline that generally runs in an east-west orientation south of DEC and Los Medanos. Both DEC and Los Medanos are located in Pittsburgh, California.

[4] The pigging station would facilitate the cleaning and remote inspection of CPN's gas line facilities.

amendment included provision for a mobile pig receiver/launcher skid, which consists of a 4-inch valve and approximately 14 feet of pipe at the interconnection with the SRGS pipeline. CEC approved the amendment in May 2001.

PG&E now seeks Commission authorization under Section 851 to grant CPN an easement necessary to install, operate, and maintain the pigging station and to create an additional interconnection with the SRGS pipeline.

The proposed easement would permit CPN to install two 10-inch underground pipelines on PG&E property. These two pipelines would turn the SRGS pipeline to the east, through the PG&E property and into the pigging station on the adjacent property to the east of the PG&E property, and would then come back out of the pigging station and reattach to the existing SRGS pipeline, thereby creating a loop. The proposed easement would also grant CPN permanent surface access across the affected PG&E property to the pigging station.

PG&E represents that the proposed easement will not interfere with the operation of PG&E's gas or electric transmission systems or with the provision of service to customers.

C. The Proposed Agreement between PG&E and CPN

PG&E has filed a proposed easement agreement with CPN to be executed if the Commission approves this application. In the agreement, PG&E grants a non-exclusive easement to CPN to excavate for, install, replace, maintain and use two 10-inch pipelines for conveying gas and a related right of surface access. CPN has agreed to comply with all legal and governmental requirements related to the easement and acknowledges that the easement is granted subject to the provisions of Commission General Order (G.O.) 95, G.O. 112-E, G.O. 128, and the requirements of this decision. CPN will pay PG&E $10,025.00 for the easement. PG&E has reserved the right to utilize the easement area for purposes

that will not materially interfere with CPN's use and maintenance of the pipelines.

In the agreement, CPN has acknowledged the presence of potential environmental hazards[5] in the easement area and has indemnified PG&E for related liability, except that PG&E shall remain responsible for claims that do not arise from hazardous substances or materials introduced by CPN, the negligence or intentional misconduct of CPN, or the exacerbation of any environmental conditions in the easement area by CPN.[6]

The proposed easement agreement would permit CPN to assign, transfer, convey or mortgage the easement without the prior consent of the Commission, or of PG&E if the proposed assignment, transfer, conveyance or mortgage would not result in costs to PG&E.

D. 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

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[5] Potential environmental hazards acknowledged by CPN include hazardous wastes, polychlorinated biphenyls (PCBs), special nuclear or byproduct materials, radon gas, formaldehyde, lead contamination, fuel or chemical storage tanks, electric and magnetic fields, or other substances, material, products or conditions on, in, and around the easement area. Agreement, paragraph 4.

[6] CPN has also indemnified and held harmless PG&E from liability for claims for personal injury, death, property damage, violations of law or matters for which strict liability is imposed by law, which are related to CPN's use of the easement or easement area, except for claims arising from the gross negligence or willful misconduct of PG&E. CPN will provide PG&E with certificates of insurance that name PG&E as an additional insured to give PG&E further protection from potential liability related to CPN's installation, use and maintenance of the proposed easement.

"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 proposed project is subject to CEQA and the Commission must issue a discretionary decision without which the project cannot proceed (i.e., the Commission must act on the Section 851 application), this 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 California Energy Commission (CEC) is the Lead Agency for the DEC project. On February 9, 2000, the CEC issued a final decision (final decision) certifying Delta Energy's application to construct and operate the DEC project. The final decision contains site-specific environmental impact analyses, required mitigation measures and enforceable conditions of certification to address environmental issues. In October 2001, Delta Energy filed a petition seeking CEC approval to amend its license for the DEC project to permit two additional natural gas interconnections, including the SRGS interconnection and components of the pigging station addressed in this application. The CEC subsequently approved Delta Energy's amendment and issued a Notice of Insignificant Project Change (NOI). The NOI, adopted on April 27, 2001, includes a CEC finding that there is no possibility that the project change will have a significant environmental effect.

In this case, the Commission is a Responsible Agency under CEQA. The Commission's role is therefore limited to reviewing the environmental consequences of PG&E's proposed conveyance of the easement to CPN as part of its discretionary approval of this application. In general, the Commission must consider the Lead Agency's Environmental Impact Report or Negative

Declaration prior to acting upon or approving the project (CEQA Guideline 15050(b)). However, here, since the CEC siting process is a "certified regulatory program" pursuant to Section 21080.5 of the Public Resources Code, the Commission must treat the final decision and NOI as equivalent to an environmental impact report (EIR) and negative declaration respectively.

We have reviewed and considered the final decision and NOI prepared by CEC and find that these documents are adequate for our decisionmaking purposes under CEQA. We find that the Lead Agency reasonably concluded in the NOI that the conveyance of the proposed easements by PG&E to CPN will have no significant environmental effect and that no mitigation measures or consideration of alternatives were required. A copy of the NOI is attached as Appendix A.

E. Ratemaking Considerations

The PG&E land involved in the proposed easement is part of PG&E's electric transmission property that is subject to Federal Energy Regulatory Commission (FERC) jurisdiction for ratemaking purposes. PG&E therefore proposes to treat the revenues from the easement according to applicable FERC accounting and ratemaking requirements. This treatment of revenues from the proposed easement is unopposed.

3. 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 secured from the Commission an order

authorizing it to do so." Since the proposed easement would be an encumbrance on PG&E property, we must apply Section 851 in considering this application.[7]

The primary question for the Commission in Section 851 proceedings is whether the proposed transaction is adverse to the public interest. In reviewing a Section 851 application, the Commission may "take such action, as a condition to the transfer, as the public interest may require."[8] 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.[9]

We find that PG&E's conveyance of the proposed easements to CPN will serve the public interest. PG&E's conveyance of the easements to CPN will facilitate CPN's inspection and cleaning of its pipeline and will provide an additional interconnection to the SRGS pipeline, thereby improving gas service reliability for DEC and Los Medanos. The terms of the proposed easement agreement between PG&E and CPN are reasonable and appear not to subject PG&E to undue potential liability that could affect PGE's ability to provide utility service to the public. Moreover, the proposed easements 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 Commission requirements.

We are concerned that the proposed easement agreement would permit CPN to assign, transfer, convey or mortgage the easement without Commission approval. However, we will address this concern by requiring CPN to give advance notice to PG&E of any such action and will require PG&E to apply for

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[7] D.01-08-069.

[8] D.3320, 10 CRRC 56, 63.

[9] D.00-07-010 at p. 6.

Commission authorization pursuant to Section 851 for any proposed assignment, transfer, conveyance or mortgage of the easement by CPN that would alter the terms of the existing easement.

We also approve of the proposed ratemaking treatment for the compensation that CPN will pay to PG&E for the easement. Since this land is part of PG&E's electric transmission property, it is appropriate for revenues from the easement to be credited according to applicable FERC orders and requirements.

4. Conclusion

For all of the foregoing reasons, we grant the application of PG&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 29, 2001). 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.

Findings of Fact

1. Our consideration of this application is expedited based on representations that CPN must obtain the easement by February 1, 2002 in order to meet its construction schedule and minimize the time that the SRGS pipeline is out of service.

2. The proposed easements will not interfere with PG&E's use of the property or with service to PG&E's customers, and will be utilized in a manner consistent with FERC and Commission requirements.

3. CEC is the Lead Agency for the proposed DEC project under CEQA.

4. Delta Enegy's Petition seeking approval to amend its license for the DEC project, filed with CEC in October 2001, addressed the SRGS interconnection and components of the pigging station that created the need for the easement requested in this application.

5. CEC's NOI for Delta Energy's amendments to its license for the DEC project addressed the SRGS interconnection and components of the pigging station.

6. CEC's NOI for Delta Energy's amendments to its license for the DEC project, adopted by CEC on April 27, 2001, found that there is no possibility that changes to the project, including the SRGS interconnection and the pigging station addressed in this application, will have a significant environmental effect.

7. The Commission is a Responsible Agency for the purposes of environmental review of the proposed easement under CEQA.

8. Consistent with the Lead Agency's findings and determination, we find that no significant environmental effect will result from the project.

9. Compensation received by PG&E from CPN for the proposed easements will be credited according to the applicable FERC accounting and ratemaking requirements.

10. The proposed easement will facilitate CPN's cleaning and remote inspection of its gas line facilities, will provide an additional interconnection with the SRGS pipeline, and will increase gas service reliability for DEC and Los Medanos.

Conclusions of Law

1. Since the CEC siting process is a "certified regulatory program" pursuant to Section 21080.5 of the Public Resources Code, the Commission must treat CEC's final decision on the DEC project and the NOI on amendments to Delta

Energy's license for the project as equivalent to an EIR and a negative declaration, respectively.

2. The final decision and NOI prepared by CEC are adequate for the Commission's decisionmaking purposes as a responsible agency.

3. Consistent with Section 851, PG&E's conveyance of the proposed easement to CPN will serve the public interest and should be authorized.

4. The decision should be effective today in order to allow the easement to be conveyed to CPN expeditiously.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) is authorized to convey an easement across its electric transmission property in the area of Pittsburgh, California to CPN Pipeline Company (CPN) as described in this decision.

2. PG&E shall amend Section 15, regarding Assignment; Agreement to Dedicate and Section 16, regarding Collateral Assignment, of its proposed agreement with CPN, to require advance notice to PG&E and Commission approval of any proposed assignment, transfer, conveyance, or mortgage of the easement that would alter the terms of the easement.

3. PG&E shall submit a copy of final easement documents by advice letter filing within sixty (60) days of this order.

4. PG&E shall credit revenues received from CPN for the easement according to the applicable FERC accounting and ratemaking requirements.

5. This proceeding is closed.

This order is effective today.

Dated January 23, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners

APPENDIX A

(SEE CPUC FORMAL FILES FOR A COPY OF APPENDIX A)