
PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



December 13, 2002

TO: ALL PARTIES OF RECORD IN APPLICATION 02-10-017

Decision 02-12-021 is being mailed without the Concurrence of Commissioner Carl Wood. The Concurrence will be mailed separately.

Very truly yours,

/s/ CAROL BROWN
CAROL A. BROWN, Interim Chief
Administrative Law Judge

CAB/avs

Decision 02-12-021 December 5, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC COMPANY (U 39 M) For an Order Authorizing PG&E Under Public Utilities Code Section 851 to Grant an Easement to the Transmission Agency of Northern California to Use and Maintain an Existing Road Across PG&E Properties.

Application 02-10-017
(Filed October 16, 2002)

**OPINION GRANTING APPROVAL
UNDER PUBLIC UTILITIES CODE SECTION 851
FOR CONVEYANCE OF AN EASEMENT BY
PACIFIC GAS AND ELECTRIC COMPANY TO
TRANSMISSION AGENCY OF NORTHERN CALIFORNIA
TO PROVIDE ACCESS TO TRANSMISSION FACILITIES**

1. Summary

This decision grants the unopposed application¹ of Pacific Gas and Electric Company (PG&E) for Commission authorization under Public Utilities Code Section 851² to grant a non-exclusive easement to the Transmission Agency of Northern California (TANC). The easement will enable TANC to maintain and use an existing road to access its transmission tower (Tower 428) in order to perform emergency and/or routine maintenance.

¹ The application was filed on October 16, 2002. In Resolution ALJ 176-3098, dated October 24, 2002, we preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings are unnecessary.

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

2. Request

On October 16, 2002, PG&E filed this application requesting expedited approval of an easement with TANC under Public Utilities Code § 851. PG&E requested an expedited procedural schedule. The assigned Administrative Law Judge (ALJ) issued a ruling shortening the protest period.

3. Background

Tower 428 is owned by TANC and is part of the California-Oregon Transmission Project. Tower 428 is located in Shasta County. As a result of recent flooding, TANC's access road to Tower 428 was rendered unusable and is considered irreparable. As a result, TANC seeks an easement from PG&E to provide for an alternate means of access to Tower 428 to allow it to conduct maintenance and ensure safe operation of the transmission line.

The PG&E property involved is an existing graded, unpaved road that PG&E owns in fee. The size of the easement is 25 feet by one mile. A legal description of the easement is attached to the application as Exhibits B and is incorporated into this decision by reference.

Notice of the filing of PG&E's application appeared in the Commission's October 24, 2002 Daily Calendar. By ruling, the assigned ALJ shortened the protest period to November 4, 2002. No protests were filed.

4. Proposed Easement Agreement

PG&E has filed a proposed agreement with TANC, to be executed if the Commission approves this application. In the easement agreement, PG&E grants a non-exclusive easement to TANC to use an existing private road located on PG&E property for access to operate, maintain, and repair Tower 428. The easement allows TANC to trim and clear vegetation along the road corridor and to repair, maintain, and modify the road to allow vehicle access necessary to

perform maintenance and repair of Tower 428. TANC may not assign the easement without PG&E's prior written consent.

PG&E has reserved the right to use the easement area as necessary and appropriate to serve its patrons, consumers, and the public. Under the agreement, TANC must coordinate with PG&E to minimize interference with use of the easement area by PG&E and other easement holders and the adjoining PG&E land. TANC may not create a nuisance or otherwise use the easement area in a way that endangers human health, PG&E facilities, adjacent properties, or the environment. TANC's use of the easement area must be compatible with the applicable Commission General Orders and decisions and other legal requirements. TANC must maintain the easement area in good condition. TANC may not construct additional facilities in the easement area without the prior consent of PG&E and, when legally required, the Commission.

In addition, with one exception,³ TANC has agreed to indemnify and defend PG&E from any claims for liability for personal injury (including death) or property damage in the easement area, violation of any legal requirement, or strict liability imposed by law, which arise from TANC's occupancy or use of the easement area. TANC accepts the easement area "as is," and has acknowledged the possible presence of potential environmental hazards in, on or about the easement area. In order to further protect PG&E from liability, TANC must carry

³ TANC's indemnification of PG&E does not include any claim arising from the sole negligence or willful misconduct of PG&E.

a specified level of insurance coverage during the term of the agreement.⁴

TANC will pay PG&E \$1,100 for the easement.

5. Environmental Review

The California Environmental Quality Act (CEQA) (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 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 typically the public agency with the greatest responsibility for supervising or approving the project as a whole (CEQA Guidelines Section 15051(b)).

Here, TANC is the Lead Agency for the project under CEQA. The Commission is a Responsible Agency for this proposed project under CEQA. As a responsible agency, the Commission must consider the lead agency’s environmental documents and findings before acting upon or approving the

⁴ This insurance must include commercial general liability insurance, which names PG&E as an additional insured, in the amount of \$5 million per occurrence, with additional coverage for defense costs, as well as business auto insurance, workers’ compensation, and employer’s liability insurance, at specified levels. As a public agency, TANC may self-insure for some or all of these obligations. However, if TANC opts to self-insure, it is liable to PG&E for the same amounts specified in the insurance requirements stated in the agreements and is held to the same standards of good faith and promptness as a third party insurance company.

project. (CEQA Guidelines Section 15050(b).) CEQA Guideline Section 15096 enumerates the general process for a responsible agency. CEQA requires that the Commission consider the environmental consequences of a project that is subject to its discretionary approval. In particular, the Commission must consider the Lead Agency's environmental documents and findings before acting upon or approving the project (CEQA guidelines 15050(b)). The specific activities which must be conducted by a Responsible Agency are contained in CEQA guidelines Section 15096.

In May 2002, TANC released for public comment a Draft Negative Declaration ("DND") and posted the DND for public comment with the State Clearinghouse (SCH# 2002052010). A Final Negative Declaration ("FND") was made available to the public in July 2002. The FND determined that the access road project will have a de minimus effect on fish and wildlife and will further result in no significant effect on the environment.

On July 17, 2002, the TANC Commission received the FND and the comments, statements, and other evidence presented by all persons, including members of the public who appeared and addressed the TANC Commission. Subsequent to this, TANC took discretionary action on the Project, certified the FND, and approved the project. A Notice of Determination was filed with SCH, in compliance with Sections 21108 and 21152 of the Public Resources Code.

6. Ratemaking

The PG&E land involved in the proposed easement is used for non-nuclear, hydroelectric generation purposes. There is no effect on PG&E's electric rate base because there is no sale of property involved. PG&E proposes to treat revenues from this easement as Other Operating Revenues, and credit the

revenue to the Transition Cost Balancing Account (TCBA) on a monthly basis. This treatment of revenues from the proposed easement is unopposed.

7. Discussion

PG&E's application is made under Section 851, which requires Commission approval before a utility can sell, lease, assign, mortgage, or otherwise encumber the whole or any part of its property that is necessary or useful in the performance of its duties to the public. Granting of an easement on utility property is an encumbrance, and therefore requires approval under Section 851.⁵

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."⁶ 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.⁷

We find that PG&E's conveyance of the proposed easement to TANC would serve the public interest. 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 Commission and legal requirements. PG&E's conveyance of the easement to TANC would also serve the public

⁵ As the Commission previously stated: "The language of Section 851 is expansive, and we conclude that it makes sense to read "encumber" in this statute as embracing the broader sense of placing a physical burden, which affects the physical condition of the property, on the utility's plant, system, or property." (D.92-07-007, 45 CPUC 2d 24, 29.)

⁶ D.3320, 10 CRRC 56, 63.

⁷ D.00-07-010 at p. 6.

interest by enabling TANC to maintain its facilities in an important electric transmission corridor.

We also approve the proposed ratemaking treatment for the compensation that TANC will pay to PG&E for the easement. Revenue should be credited to the TCBA.

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

8. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

9. Assignment of Proceeding

Geoffrey Brown is the Assigned Commissioner and Michelle Cooke is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The proposed easement 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 Commission and legal requirements.
2. TANC is the Lead Agency for the proposed project under CEQA.
3. TANC prepared a Draft Negative Declaration for the project pursuant to CEQA, which found that the proposed project would have a less than significant effect on the environment.
4. On July 17, 2002, the TANC Commission adopted the FND, adopted the Findings of Fact, and approved the project.
5. The Commission is a Responsible Agency for the proposed project under CEQA.

6. Compensation received by PG&E from TANC for the proposed easement will be credited to the TCBA.

7. The project will enable TANC to access, maintain, and repair its transmission facilities.

Conclusions of Law

1. The Negative Declaration, the Notice of Determination and the TANC Commission Resolution (# 2002-13) adopted by the TANC Commission are adequate for the Commission's decision-making purposes as a Responsible Agency under CEQA.

2. Consistent with the TANC's findings and determinations, we find the proposed project will have a less than significant effect on the environment.

3. Consistent with Section 851, PG&E's conveyance of the easement to TANC for the project 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 TANC expeditiously.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) is authorized to convey an easement, as described in Exhibit A of the Application, to the Transmission Agency of Northern California.

2. When the final easement documents are executed, PG&E shall submit a copy of those documents to the Director of the Energy Division within sixty (60) days of this order.

3. PG&E shall credit the fees of \$1,100.00 to the Transition Cost Balancing Account.

This order is effective today.

Dated December 5, 2002, at San Francisco, California.

HENRY M. DUQUE
CARL WOOD
GEOFFREY F. BROWN
MICHAEL R. PEEVEY
Commissioners

President Loretta M. Lynch, being necessarily absent,
did not participate.

I will file a concurrence.

/s/ CARL WOOD
Commissioner