

Decision 08-06-038 June 26, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company and the City of Shasta Lake for authorization pursuant to Public Utilities Code Section 851 to Grant an Easement to install, use and maintain an Underground Sewer Pipeline (U39E).

Application 08-05-010
(Filed May 7, 2008)

DECISION GRANTING APPROVAL UNDER PUBLIC UTILITIES CODE SECTION 851 FOR AN EASEMENT TO INSTALL, USE AND MAINTAIN A UNDERGROUND SEWER PIPELINE ON UTILITY PROPERTY

Summary

We grant the application of Pacific Gas and Electric Company (PG&E) and the City of Shasta Lake (City) for an order pursuant to Public Utilities Code Section 851¹ authorizing PG&E to grant a permanent, non-exclusive easement to the City for the installation, maintenance, and use of a sewer pipeline and associated appurtenances on a portion of PG&E's property, commonly known as the Keswic-Cascade Utility Corridor, located in the City, County of Shasta, California (Property).

In granting this easement, the Commission is a Responsible Agency under the California Environmental Quality Act (CEQA).² CEQA requires the Commission to consider the Lead Agency's environmental documents before

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

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

acting upon or approving the project.³ We have reviewed the City's environmental documents and find them to be adequate for our decision-making purposes and we adopt the City's Mitigated Negative Declaration.

Application (A.) 08-05-010 is closed.

On May 7, 2008, PG&E and the City filed A.08-05-010 seeking Commission authorization for PG&E to grant an easement to the City to install, use and maintain an underground pipeline on a portion of PG&E's property commonly known as the Keswick-Cascade Utility Corridor. Specifically,

PG&E and the City request permission for PG&E to grant the City a permanent, non-exclusive easement over PG&E's Property to construct, use, and maintain a 71-foot long section of 15-inch diameter PVC sewer pipeline (the "Project"). The Project consists of the replacement and paralleling of existing wastewater transmission mains located generally from Red Bluff Street to the Salt Creek Relief Lift Station south of Pine Grove Avenue ...⁴

The applicants state:

The Project is necessary to correct existing deficiencies and to meet future increasing wastewater demands. The initial sewage collection system was constructed in 1976. Due to poor construction practices used during construction of the initial collection system, the City has had an ongoing problem with excessive infiltration and inflow. Between 1978 and 1983, raw sewage overflows occurred at certain manholes and lift stations. Without the project there is a significant threat of future raw sewage overflows, which would not

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 Pacific Gas and Electric Company and the City of Shasta Lake for Authorization Pursuant to Public Utilities Code Section 851 to Grant an Easement to Install, Use and Maintain an Underground Sewer Pipeline (Application), May 7, 2008 at 1-2.

only impact both residential and commercial neighborhoods within the City of Shasta Lake but also would make their way to Salt Creek, a tributary to Churn Creek that runs through the City of Redding and eventually discharges to the Sacramento River. Obviously, any discharge of raw sewage would present a severe health and safety condition; in addition it would be a violation of the City's waste discharge permit with the Regional Water Quality Control Board.⁵

The application describes the location and goals of the project as follows:

The majority of the project is located within existing utility easements and public right-of-ways within residential areas of the City. The proposed Project is designed to provide increased trunk sewer capacity and significantly reduce surcharge problems in the Project area. The replacement sewers should also help eliminate the infiltration and inflow associated with existing sewers. Although the City will still need to implement an ongoing infiltration and inflow program, the proposed improvements should help eliminate the current threat of raw sewage overflows within the collection system.⁶

As part of this larger plan,

... the City is proposing to upgrade and replace an existing sewer line located between Bonneville Street and Pine Grove Avenue, which will encumber the Property. Therefore, the City needs to acquire from PG&E a non-exclusive easement measuring 20 feet wide and approximately 71-feet long to excavate for, construct, install, repair, replace, remove, maintain and use a single sewer pipeline not exceeding fifteen inches in diameter, with necessary valves and other appliances and fittings, for use in connection with said pipeline lying ...⁷

⁵ Id. at 2.

⁶ Id. at 2-3.

⁷ Id. at 3.

In return for granting the easement, the City has agreed to pay PG&E “a one-time fee of One Thousand Dollars (\$1,000) as the fair market value for the easement.”⁸ PG&E proposes to account for the one-time easement fee as “Electric Other Operating Revenues” in its utility accounts.⁹ PG&E notes that the transmission corridor is “subject to Federal Energy Regulatory Commission jurisdiction for ratemaking.”¹⁰ PG&E also 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.”¹¹

On May 15, 2008, Resolution ALJ 176-3213 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 the City have filed a proposed easement agreement with the application. Specifically, PG&E grants the City a “non-exclusive easement to excavate for, construct, install, repair replace (with the initial or any smaller size), remove, maintain and use a single sewer pipe line not exceeding fifteen inches (15”) in diameter, with necessary valves and other appliances and fittings for use in connection with said pipe line ... ”¹² In addition, the easement grants the City

⁸ Id. at 8.

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² Id. at Exhibit A, p. 2.

the right to ingress and egress, as well as the ability to use a portion of the Property as a construction staging area during the construction period.

The easement proposes traditional restrictions that limit use by the grantee and prohibit the assignment of the easement by the grantee without prior written consent from PG&E. 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 the City indemnify PG&E against any claims that may arise from the sewer project. The easement becomes effective only after the Commission approves the easement. In addition, the City must obtain insurance, including workers compensation, commercial general liability and business auto that covers work done on the PG&E Property.

Environmental Review

CEQA¹³ 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.”¹⁴

CEQA applies to discretionary projects to be carried out or approved by public agencies. Because the Commission must act on the Section 851 application and issue a discretionary decision without which the project cannot proceed,

¹³ Public Resources Code Section 21000, *et seq.*

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

then, pursuant to CEQA, the Commission must act as either a Lead or 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)).¹⁵

In this case, the City is the Lead Agency. The City's environmental review process and associated documents are the traditional CEQA preparation of an Environmental Impact Report.

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).)

The Application contains substantial details of the City's CEQA activities, including copies of the Environmental Impact Report prepared for the sewer project. More specifically, the Application describes the CEQA review process conducted by the City. The Application states:

On August 8, 2006, the City prepared an Initial Study/Environmental Assessment pursuant to CEQA and the National Environmental Policy Act (the "Environmental Study"), which is at Exhibit B.¹⁶ The Environmental Study concluded that

¹⁵ The specific activities that must be conducted by a Responsible Agency are contained in CEQA Guidelines Section 15096.

¹⁶ The Environmental Study (Exhibit B) at p. 1, Part 4, and attached maps, in particular, Location Map 2 and 2A: Upper Salt Creek Trunk Sewer describe the general area

Footnote continued on next page

with the inclusion of the Standard Mitigated Measures, the Project as proposed will not result in significant adverse effects on the environment that could not be mitigated. A summary of these Standard Mitigation Measures relating to mandatory findings of significance are:

- Mitigation Measure 2.1 Relating to Air Quality (p. 8 of Environmental Study)
- Mitigation Measure 3.1-11 Relating to Biological Resources (pp. 10-11)
- Mitigation Measure 4.1-3 Relating to Cultural Resources (pp. 12-13)
- Mitigation Measure 5.1-6 Relating to Geology and Soils (pp. 14-15)
- Mitigation Measure 10.1 Relating to Noise (p. 21)¹⁷

Subsequently, the City, in reliance on its environmental study, ...issued Resolution PC 06-08, adopting the environmental finding of a Mitigated Negative Declaration and a Finding of No Significant Impact for Project E 06-01-Master Wastewater Plan Improvements.¹⁸

We have reviewed the City's environmental documents, which were submitted as Exhibit B attached to the Application, and find them to be adequate for our decision-making purposes. Therefore, for purposes of our Section 851 review, we adopt the City's Mitigated Negative Declaration.

where the Easement Area is located within the City's comprehensive Wastewater System Improvement Plan area.

¹⁷ Id. at 4.

¹⁸ Id. at 4-5.

Proposed Ratemaking

As noted above, PG&E proposes to credit \$1,000 received from the City for the easement to Other Operating Revenue. As a result of this action, the funds will reduce the future revenue requirements from customers consistent with conventional general rate case cost-of-service ratemaking.

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 proposed to be conveyed to the City will be an encumbrance on PG&E Property, we apply Section 851 in considering the application.¹⁹

The primary question for the Commission in Section 851 proceedings is whether the proposed transaction is not 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.”²⁰ 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.²¹

We find that the proposed easement to the City will not have an adverse effect on 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,

¹⁹ Decision (D.) 01-08-069.

²⁰ D.3320, 10 CRRC 56, 63.

²¹ D.00-07-010 at p. 6.

and will be utilized in a manner consistent with legal and regulatory requirements.

We also approve the proposed ratemaking treatment for the \$1000 compensation that the City will pay PG&E for the easement.

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 176-3213 of May 15, 2008.

Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code 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 Timothy J. Sullivan is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The proposed easement on the Keswic-Cascade Utility Corridor will enable the City of Shasta Lake to construct its sewer and pollution abatement program as planned.
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. The City is the Lead Agency for the proposed project under CEQA.
4. The City has conducted an environmental review that includes the Site.

5. The City has issued a mitigated negative declaration with regard to the construction of the proposed sewer line on the affected site.

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

7. Consistent with the County's findings and determinations, we find no significant environmental effect will result from the project.

8. All revenue from the easement will flow to Other Operating Revenue and will be used to reduce the future revenue requirements from customers consistent with general rate case conventional cost-of-service ratemaking.

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

Conclusions of Law

1. The Mitigated Negative Declaration adopted by the City, which includes the construction of the sewer pipe for which this easement is requested, is adequate for the Commission's decision-making purposes under CEQA.

2. Approving the requested easement will not have an adverse effect on the public interest and is consistent with Section 851 and should therefore be authorized.

3. The preliminary determination as to categorization and need for a hearing made in Resolution ALJ 176-3213, should be approved.

4. The proposed ratemaking and accounting treatment for the \$1,000 easement fee is reasonable.

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

6. This decision should be effective today in order to allow the easement to be conveyed to the City expeditiously.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) is authorized to convey a permanent, non-exclusive easement to the City of Shasta Lake for the construction of the proposed sewer line as discussed herein. When the final easement documents are executed, PG&E shall submit a copy by advice letter filing within sixty (60) days of this order.
2. The \$1,000 revenue from the easement shall be treated as Other Operating Revenue and should be used to reduce PG&E's revenue requirement consistent with conventional cost-of-service ratemaking.
3. Application 08-05-010 is closed.

This order is effective today.

Dated June 26, 2008, at San Francisco, California.

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