

Decision 09-02-021 February 20, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC COMPANY (U39M), a California Corporation, and PENINSULA CHRISTIAN FELLOWSHIP CHURCH, a Non-Profit Mutual Benefit Corporation, for an Order Authorizing the Sale and Conveyance of a Certain Parcel of Land In San Mateo County Pursuant to Public Utilities Code Section 851 (U39E).

Application 08-12-010
(Filed December 15, 2008)

DECISION GRANTING APPROVAL UNDER PUBLIC UTILITIES CODE SECTION 851 FOR CONVEYANCE OF A CERTAIN PARCEL OF LAND IN SAN MATEO COUNTY TO PENINSULA CHRISTIAN FELLOWSHIP CHURCH

Summary

This decision grants the application of Pacific Gas and Electric Company (PG&E) and Peninsula Christian Fellowship Church (Church) for Commission authorization under Public Utilities Code Section 851¹ for PG&E to convey .488 acres of land (Property) located in the City of San Bruno (City), San Mateo County to the Church. Church plans to use the Property in conjunction with an adjacent .61 acre parcel to construct townhomes, the Cedar Grove Development Project, which was approved by the City on June 30, 2008. PG&E will reserve the

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

necessary easement rights over all the Property for its current and future utility purposes. We approve the accounting treatment for financial proceeds as consistent with the Commission's Decision in the Gain-on-Sale Rulemaking, Decision 06-05-041, and we find the environmental review already conducted and approved by the City as Lead Agency is adequate for our approval of this application.

Background

PG&E proposes to sell and convey approximately .488 acres of land located in San Bruno, San Mateo County, to the Church for a purchase price of one-hundred-seventy-five-thousand dollars (\$175,000). The Property is a portion of a larger tract of land supporting PG&E's San Bruno Substation², but the portion of land to be sold is no longer necessary or useful for PG&E's utility operation. The Church, a California non-profit mutual benefit corporation, owns .61 acres of real property adjacent to the PG&E parcel on which it had a church building that was destroyed by fire in 2002. With the PG&E Property, the Church will have an overall project site of 1.9 acres. The Church has received City approval to build fourteen townhomes, on its .61 acres, and to use the new PG&E Property for open space and a residential access road and turnaround area for the townhome project (Project). The new townhomes will provide much needed housing for the community, will utilize green building principles, and the sale of the homes will help fund the building of a replacement church at a different location.

² The property is identified by State Board of Equalization No. 135-41-21A, Parcel 1.

PG&E and the Church filed the application on December 15, 2008, seeking expedited approval of the sale by March 6, 2009. The application proposes that the proceeding be categorized as ratesetting and that no hearings would be necessary. No protests have been received to the application.

Background

The .488 acres of land is part of a larger tract owned by PG&E that PG&E acquired in 1950 to use as a buffer zone for its San Bruno Substation. PG&E determined that this parcel is unsuitable for substation use or expansion for substation support due to its topography. Currently on the Property are three existing overhead electric distribution pole line facilities and associated anchor pole guy wires that exit from the San Bruno Substation that are not included in the sale. PG&E will reserve necessary easement rights over the Property for its current and future utility uses.

The sales price of \$175,000 for the Property is based on an appraisal performed in February 2005 that valued the Property at \$170,000. Parties stated in the application that an updated appraisal was not obtained because perceived current market values were lower than in 2005.

Purchase and Sale Agreement

In the purchase and sale agreement, PG&E agreed to sell the Property to the Church for \$175,000. A copy of the agreement is appended to the application as Exhibit A. PG&E has reserved easements for its facilities as necessary for its operations.

Environmental Review

The California Environmental Quality Act (CEQA)³ 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.”⁴ Since the Commission must act on the PG&E/Church 851 application and issue a discretionary decision without which the project cannot proceed, the Commission must act as either a Lead Agency or Responsible Agency under CEQA. However, 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.⁵ All other agencies with discretionary approval over the project are “Responsible Agencies.”⁶ To comply with CEQA, a Responsible Agency must consider the Lead Agency’s EIR, negative declaration or other CEQA analysis. The Lead Agency’s determination is final and conclusive on the Responsible Agency unless the determination is challenged under the Public Resources Code Section 21167, circumstances or conditions change, or the Responsible Agency assumes the Lead Agency Role.⁷

³ Public Resources Code Section 21000, *et seq.*

⁴ Title 14 of the California Code of Regulations (hereinafter, CEQA Guidelines), Section 15002.

⁵ CEQA Guidelines, Section 15050.

⁶ *Id.*, Section 15381.

⁷ *Id.*, Section 15050(b)-(c).

The City, as Lead Agency, already conducted a CEQA review of the environmental impacts of the entire Project, encompassing both the property already owned by the Church and the adjacent PG&E Property subject to the sale, and has certified a Mitigated Negative Declaration. Therefore, the Commission is in the role of the Responsible Agency for purposes of CEQA and the Commission is required to consider the Lead Agency's (City) environmental documents and findings before acting upon or approving the Project.⁸ The application includes the following environmental documents prepared by the Lead Agency for the Church Project:

Initial Study and Mitigated Negative Declaration (Cedar Grove Development Project, dated October 2007).

In evaluating the Cedar Grove Development Project, the Mitigated Negative Declaration concluded that although the proposed Project could have a significant effect on the environment, there will not be a significant effect in this case because the mitigation measures in the initial study have been incorporated into the Project. The Mitigated Negative Declaration concluded that potential impacts could affect the following areas: aesthetics, agricultural resources, air quality, biological resources, cultural resources, geology/soils, hazards and hazardous materials, hydrology/water quality, land use/planning, mineral resources, noise, population/housing, public service, recreation, transportation/circulation, utilities/service systems. With the required mitigations, any potentially significant impact was reduced to "less than

⁸ *Id.*, Section 15050(b).

significant” status. The required mitigation measures are of a standard type for residential projects of this nature.

At its June 30, 2008 meeting, the City’s Planning Commission unanimously approved a permit and the Mitigated Negative Declaration to allow the construction of 14 townhomes on the site, subject to conditions of approval that included mitigation requirements. As part of this process, the City adopted the Findings of Fact, including applicable Mitigation Measures. A Negative Declaration was previously filed on October 12, 2007, with the State Office of Planning and Research, in compliance with Sections 21108 and 21152 of the Public Resources Code.

We have reviewed the City’s environmental documents and find them to be adequate for our decision-making purposes under CEQA. Therefore, for purposes of our Project approval, we adopt the City’s Mitigated Negative Declaration.

Ratemaking Considerations

PG&E proposes to record the gain on disposition of the electric distribution property to ratepayers and shareholders consistent with the accounting treatment adopted in the Commission’s Gain-on-Sale Rulemaking 04-09-003, and a final decision Decision (D.) 06-05-041, as modified by D.06-12-043. For sales of non-depreciable property, the net-of-tax proceeds from non-depreciable property are first calculated based on the percentage of time the property was out of rate base and allocated to utility shareholders. The remaining gain or loss is then allocated 67% to ratepayers and 33% to PG&E’s shareholders.

This treatment of revenues from the proposed sale is unopposed.

Discussion

Section 851 provides that no public utility “shall . . . sell . . . the whole of any part of . . . property necessary or useful in the performance of its duties to the public,” without first having obtained Commission approval. Since the property proposed to be conveyed to the Church is PG&E property, we apply Section 851 in considering this application.⁹

The primary question for the Commission in Section 851 proceedings is whether the proposed transaction is in 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.”¹⁰ 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.¹¹

We find that PG&E’s conveyance of the Property to the Church is in the public interest. PG&E no longer needs to own the property for utility purposes and reserves easements over the Property for all existing utility facilities located on or under the Property. Therefore, there will be no interference with PG&E’s operation of the three existing overhead electric distribution pole line facilities and associated anchor pole guy wires that remain on the Property and are not subject to the sale, nor will service to PG&E’s customers be affected by the sale. PG&E’s retention of the easement allows the utility to retain all rights necessary for future maintenance and future operation of the existing facilities with none of the obligations attendant to ownership of the Property. As stated in the

⁹ D.01-08-069.

¹⁰ D.3320, 10 CRRC 56, 63.

¹¹ D.00-07-010 at p. 6.

application, PG&E will no longer be responsible for the maintenance costs or the payment of property taxes associated with the Property, nor will the utility be responsible for the liability for injury to trespassers or others who may enter onto the Property.

PG&E's conveyance of the Property will serve the public interest by providing the open space and residential access road and turnaround area for the construction of the much-needed townhomes. In addition, the Church will use the funds from the sale of the townhomes to build a new church on a different site, to replace the church destroyed by fire in 2002.

We also approve the proposed ratemaking treatment for the compensation that the Church will pay to PG&E for the Property.

Conclusion

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

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 176-3228, dated January 29, 2009.

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, the otherwise applicable 30-day period for public review and comment was waived.

Assignment of Proceeding

Dian M. Grueneich is the assigned Commissioner and Carol A. Brown is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The proposed sale of .488 acres of PG&E property will not interfere with PG&E's utility operation or affect service to PG&E customers and will allow land that is not necessary or useful to PG&E to be used by the Church to construct much-needed housing for the community and allow the Church to use the sale proceeds from the new housing to fund construction of a new church building.

2. The City of San Bruno is the Lead Agency for the proposed Project under CEQA.

3. The City has prepared and adopted a Mitigated Negative Declaration for the Project, which found that the Project, with the required mitigation efforts, will not have a significant adverse effect on the environment.

4. The Commission is a Responsible Agent for the proposed Project under CEQA.

5. Consistent with the City's findings and determinations, we find that no significant environmental effect will result from the Project.

6. Compensation received by PG&E from the Church will be treated consistent with the accounting treatment provided by D.06-05-041, the Commission's decision in its Gain-on-Sale Rulemaking, allocating the net-of-tax proceeds from non-depreciable property 67% to ratepayers and 33% to PG&E shareholders.

7. The Project will allow the Church to build fourteen townhomes, creating much-needed housing for the City, which is in the public interest.

Conclusions of Law

1. The Mitigated Negative Declaration prepared and approved by the City of San Bruno is adequate for the Commission's decision-making purposes as a Responsible Agency under CEQA.

2. Consistent with Section 851, PG&E's conveyance of the .488 acres to the Church for the building of much-needed townhomes is in the public interest and should be authorized.

3. The preliminary determinations as to categorization and need for a hearing made in Resolution ALJ-3228, should be approved.

4. The decision should be effective today in order to allow the Property to be conveyed to the Church expeditiously.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) is authorized to convey .488 acres of land to Peninsula Christian Fellowship Church, as described in the application. When the final sale documents are executed, PG&E shall submit a copy by advice letter filing within ninety (90) days of the sale closing date.

2. PG&E shall credit the gain on disposition of the Property consistent with the accounting treatment provided by the Commission's Decision 06-05-041 in the Gain-on-Sale Rulemaking for sales of non-depreciable property, under which the net-of-tax proceeds from non-depreciable property are allocated 67% to ratepayers and 33% to PG&E shareholders.

3. Application 08-12-010 is closed.

This order is effective today.

Dated February 20, 2009, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN

RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners