

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company For Expedited Approval Under Section 851 For An Easement From PG&E Allowing Elk Hills Power Project to Install and Maintain Electric Transmission Generation Tie Line Facilities on or over PG&E Utility Property and for related Access. (U 39 M)

Application 01-11-016  
(Filed November 5, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING ADDRESSING  
MOTIONS BY PACIFIC GAS AND ELECTRIC COMPANY  
AND DIRECTING SUBMISSION OF ADDITIONAL INFORMATION**

Pacific Gas and Electric Company (PG&E) filed a motion to shorten time to respond to its application and a motion for waiver of Rule 36(b) of the Commission's Rules of Practice and Procedure. Both motions are denied. PG&E is directed to file a copy of the easement agreement with Elk Hills Power Project (Elk Hills), as well as additional documentation regarding its existing easement agreements along the generation tie line and how Elk Hills easements will or will not encumber existing PG&E easements.

**Background**

On November 5, 2001, PG&E filed this application requesting expedited approval of an easement with Elk Hills under Public Utilities Code Section 851.<sup>1</sup> PG&E filed two motions concurrent with its application, a motion to shorten

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<sup>1</sup> All statutory references are to the Public Utilities Code unless noted otherwise.

time to respond to the application and a motion for waiver of Rule 36(b) of the Commission's Rules of Practice and Procedure. The application appeared on the Daily Calendar on November 16, 2001. Per Rule 44.1, the deadline for filing a protest is December 17, 2001.

The Commission issued a preliminary finding in Resolution ALJ 176-3076, issued on November 29, 2001, that the category for this proceeding is ratesetting and that hearings are necessary. Until the Assigned Commissioner issues a scoping memo, the *ex parte* rules as set forth in Rule 7(c) of the Commission's Rules of Practice and Procedure apply to this proceeding.

**Motion for Waiver of Rule 36(b)**

Rule 36(b) requires that applications include a copy of the proposed encumbrance document (in this case the easement) when a request is made to encumber utility property. PG&E requests that it not be required to submit of the finalized easement document prior to our action on the application. PG&E states that it has proceeded with the application without the easement because of the scheduling needs of Elk Hills. PG&E states that it will submit the final easement document to the Commission as a ministerial filing when it is available.

PG&E's application is for approval of an easement. Although the ultimate ratemaking of the easement revenues will be subject to Federal Energy Regulatory Commission (FERC) jurisdiction, whether or not PG&E should be allowed to enter into the easement is subject to our authority. An easement includes many terms and conditions, not just price terms, all of which are subject to Commission approval. Without being able to review the proposed easement document, there is no way that this Commission can reasonably ensure that granting an easement is in the public interest.

PG&E's motion is denied. PG&E is directed to file its proposed easement with Elk Hills no later than December 19, 2001, or file a notice indicating when the easement will be available for filing. PG&E is encouraged to file the proposed easement earlier if it is available. Until the easement is filed, the Commission will be unable to move forward with processing PG&E's application.

### **Motion to Shorten Time**

PG&E requested that we shorten the time to protest its application. Because PG&E's application does not contain a copy of the proposed easement for which it seeks approval, entities seeking to protest do not have sufficient information on which to submit a protest. However, PG&E has made a strong argument that once the proposed easement is available, time is of the essence. I will require that protests be filed no later than 15 days after PG&E files its proposed easement document.

### **Other Issues**

PG&E's application states that, in addition to the easement Elk Hills seeks from PG&E, Elk Hills will be acquiring easements from other property owners along the generation tie line. In several cases, PG&E holds a non-exclusive easement with the property owner and Elk Hills will be acquiring a non-interfering easement from the same property owner. In some situations, an existing non-exclusive easement between PG&E and a property owner requires PG&E's written consent for later grants of easements. PG&E asserts that in both cases, because PG&E is not the fee owner, but rather a non-exclusive easement holder, Section 851 does not apply.

An easement is a property right. Section 851 applies when a utility seeks to encumber property. In order to conclude that Section 851 does not apply, as PG&E asserts, we need a better understanding of the existing easements and the

property right they confer, as well as how new easements between the property owner and Elk Hills might or might not constitute encumbrance of utility property. PG&E should file additional documentation regarding the existing easements (for example, copies of easements) and document how Elk Hills easements will or will not encumber existing PG&E easements. Such documentation shall be filed no later than December 19, 2001. Following receipt of such documentation, the Commission will rule on whether Section 851 applies.

**IT IS RULED** that:

1. Pacific Gas and Electric Company's (PG&E) motion for waiver of Rule 36(b) is denied.
2. PG&E shall file its proposed easement with Elk Hills Power Project (Elk Hills) no later than December 19, 2001, or file a notice indicating when the easement will be available for filing.
3. Protests shall be filed no later than 15 days after PG&E files its proposed easement.
4. PG&E shall file additional documentation regarding its existing easements along the generation tie line and document how Elk Hills easements will or will not encumber existing PG&E easements no later than December 19, 2001.

Dated December 7, 2001, at San Francisco, California.

/s/ MICHELLE COOKE (by ang)

Michelle Cooke  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge’s Ruling Addressing Motions by Pacific Gas and Electric Company and Directing Submission of Additional Information on all parties of record in this proceeding or their attorneys of record.

Dated December 7, 2001, at San Francisco, California.

/s/ ERLINDA PULMANO  
Erlinda Pulmano

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.

