STATE OF CALIFORNIA GAVIN NEWSOM, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

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September 16, 2022 **Agenda ID #20954**
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 22-02-010:

This is the proposed decision of Administrative Law Judge Brian Korpics. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's October 20, 2022 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties to the proceeding may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, *ex parte* communications are prohibited pursuant to Rule 8.2(c)(4).

/s/ ANNE E. SIMON
Anne E. Simon
Chief Administrative Law Judge

AES:lil

Attachment

Decision **PROPOSED DECISION OF ALJ KORPICS** (Mailed 9/16/2022)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U39E) for Approval Under Public Utilities Code Section 851 to Sell the Tule River Hydroelectric Project.	Application 22-02-010

DECISION AUTHORIZING PACIFIC GAS AND ELECTRIC COMPANY SALE OF THE TULE RIVER HYDROELECTRIC PROJECT TO TULE HYDRO LLC

Summary

This decision grants Pacific Gas and Electric Company's application to sell the Tule River Hydroelectric Project and associated electric facilities to Tule Hydro LLC pursuant to Section 851 of the California Public Utilities Code. The proposed sale complies with all applicable Commission requirements and is in the public interest. No adverse environmental impact will result from the sale. This decision also approves the proposed ratemaking treatment of the sale.

This proceeding is closed.

1. Factual Background

Since 1914, Pacific Gas and Electric Company (PG&E) has owned the Tule River Hydroelectric Project and associated electric transmission lines (Project), consisting of a "6.4 [megawatt (MW)] powerhouse, three diversions, approximately four miles of water conveyance, a 70 kilovolt (kV) switchyard, and approximately four miles of 12 kV electric line connecting to a pump the hydroelectric project headworks," as well as the 15-mile Tule-Springville 70 kV transmission line.[1] The Federal Energy Regulatory Commission (FERC) licensed Project is located in Tulare County, California, on the North Fork of the Middle Fork Tule River, Hossack Creek, and Doyle Springs. The Project suffered fire damage in 2017 and has been inoperable since that time.

In June 2018, PG&E initiated a public request for offers (RFO) for the sale of the Project.[2] On December 1, 2021, PG&E and Tule Hydro LLC (Tule) executed a Purchase and Sale Agreement to transfer ownership of the Project, and PG&E and Tule later amended the agreement on January 26, 2022 (Amended Purchase Agreement).[3]

The transaction includes the Project, the water rights for electrical generation, and 43 acres of land that PG&E owns in fee and is subject to the Land Conservation Commitment, which the Commission approved in Decision (D.) 03-12-035.[4] If the proposed transaction is approved by the Commission, Tule intends to repair the Project, operate it as a hydroelectric facility consistent with former operations, and comply with all requirements of the existing FERC license.[5]

2. Procedural Background

On February 24, 2022, PG&E filed Application 22-02-010 for authority to sell the Project to Tule pursuant to Articles 2, 3, and 7 of the Commission's Rules of Practice and Procedure and Section 851 of the Public Utilities Code

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[1] Application at 1-2.

[2] *Id.* at 2-3.

[3] *Id.* at 1, A-7.

[4] *Id.* at 2, 5. There are no Project-related water rights for consumption.

[5] *Id.* at 8.

(Application).[6] On March 30, 2022, Southern California Edison Company (SCE) filed a protest to the Application. SCE raised concerns regarding sale of the 4-mile portion of 12 kV distribution line, which is used to serve SCE customers in Doyle Springs, and the 15-mile Thule Springville 70 kV line, which connects the 6.4 MW powerhouse to SCE's Springville Substation.[7]

On April 1, 2022, the assigned Administrative Law Judge granted a motion for party status of the Public Advocates Office at the Commission (Cal Advocates). On April 11, 2022, PG&E filed a reply to SCE's protest.

A prehearing conference was held on April 28, 2022, to address the issues of law and fact, determine the need for hearing, set the schedule for resolving the matter, and address other matters as necessary. The May 11, 2022 Assigned Commissioner's Scoping Memo and Ruling (Scoping Memo) set a status conference for June 29, 2022, and directed the parties to file and serve a joint statement of stipulation and update on July 27, 2022.

On May 12, 2022, SCE submitted a Status Update, which states that "concerns raised in its protest will be resolved through near-contemporaneous closing of the now-executed [Amended Purchase Agreement] for the Tule-Springville 70 kV line and establishment of a leasehold interest for the Doyle Springs 12 kV Tap line" and that "SCE does not anticipate needing to take an active role in the proceeding unless required to clarify any items [or to provide an additional status update]."[8]

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[6] All references to "Section" or "Sections" herein refer to the California Public Utilities Code, unless indicated otherwise, and all references to "Rule" or "Rules" herein refer to the Commission's Rules of Practice and Procedure, unless indicated otherwise.

[7] SCE Protest at 2.

[8] SCE Status Update at 3.

On July 27, 2022, PG&E, SCE, and Cal Advocates jointly filed a motion requesting that the Commission admit PG&E's prepared testimony and workpapers into the record as evidence.

3. Jurisdiction

PG&E has operated as a public utility providing electric and gas service in California since 1905 and is subject to the Commission's jurisdiction.

The Federal Power Act (FPA) grants exclusive jurisdiction over the licensing of non-federal hydroelectric projects to FERC and vests in FERC comprehensive control over the regulation of hydroelectric resources.[9]

4. Issues Before the Commission

The issues to be determined or otherwise considered in the Commission's review of the Application are:

1. Whether PG&E's proposed sale of the Project complies with all applicable Commission requirements and should thus be approved by the Commission as in the public interest pursuant to Section 851;
2. Whether the Commission should approve PG&E's proposed ratemaking treatment of the sale, including the process for updating the calculation of the loss-on-sale and tax information;
3. Whether the proposed sale is exempt from the requirements of the California Environmental Quality Act (CEQA); and
4. Whether PG&E applied the Tribal Land Transfer Policy, which the Commission adopted on December 5, 2019, to the sale of the Project.

[9] 16 U.S.C. §§ 797(e), 803(a)(1); Application at 11.

5. Section 851 Compliance

Section 851, in relevant part, provides that no public utility:

> shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its . . . line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder . . . without first having either secured an order from the commission authorizing it to do so for qualified transactions valued above five million dollars.[10]

In evaluating the transaction pursuant to Section 851, we first look to determine if the Project is "necessary or useful" for PG&E's performance of its duties as a public utility. The transaction concerns the Project, which PG&E has owned and operated since 1914 to provide hydroelectric power to benefit its customers. Though the Project shut down due to fire damage sustained in 2017, the plant is reparable and has an active FERC license (Project 1333) valid through July 31, 2033.[11] Therefore, we find the plant useful for its ability to generate hydroelectric power when properly repaired. Consequently, the provisions of Section 851 apply to this transaction.

Next, we look to determine if the Project value is above $5 million. As of January 31, 2022, PG&E's total historical cost for the Project is $21.0 million.[12] The net book value, which is the historical cost less accumulated depreciation, is $2.7 million.[13] The negotiated transfer payment for the sale to Tule is

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[10] Regulated entities may utilize the advice letter process for approval of transactions valued at or less than $5 million.

[11] Application at 2, 8.

[12] *Id.* at 3.

[13] *Ibid.*

$5.3 million.[14] Overall, the pre-tax loss-on-sale is approximately $8.2 million, and the after-tax loss-on-sale is estimated at $5.9 million.[15] The parties will adjust the actual amounts based on the book value as of the Amended Purchase Agreement closure date.[16] Thus, the total value of the transaction represents a loss of approximately $8.2 million to PG&E's customers, which is above the $5 million threshold for Commission review of the transaction pursuant to Section 851.

Our inquiry now turns to an assessment of whether the transaction is in the public interest. We begin with our review of PG&E's cost and benefit analysis of three alternatives for the future ownership and operation of the Project: 1) repair and continue to operate the plant; 2) sell the plant; or 3) decommission the plant by surrendering the FERC license.[17]

PG&E's cost-benefit analysis shows that selling the plant to Tule will reduce costs to PG&E customers relative to the identified alternatives.[18] Specifically, PG&E demonstrates that sale of the Project offers savings of $83.4 million, when compared to refurbishing and operating the Project, or $11.6 million, when compared to decommissioning the Project.[19] PG&E further determined that this sale "will not interfere with PG&E's operations or PG&E's ability to provide safe and reliable utility service" to its customers.[20] Finally, during the RFO process, 13 organizations submitted indicative proposals. This

[14] *Ibid.*

[15] *Id.* at Attachment C.

[16] *Id.* at 3.

[17] *Ibid.*

[18] *Ibid.*

[19] *Ibid.*

[20] *Ibid.*

constitutes a sufficient number of bids to determine that $5.3 million is a good faith value of the property.

Upon review, we agree that selling the Project is the most cost-effective alternative for PG&E customers and, having identified no foreseeable adverse impacts of this transaction, find PG&E's sale of the Project to Tule is in the public interest.

6. Ratemaking Treatment

We agree with PG&E's ratemaking proposal because the approach is in accordance with Commission policy. The Commission's gain on sale of utility assets decision allows utilities to seek allocation of an after-tax loss of $50 million or less pursuant to the "percentage allocation rule."[21] Under this rule, 100 percent of depreciable assets are allocated to customers; 67 percent of non-depreciable assets are allocated to customers; and 33 percent of non-depreciable assets are allocated to shareholders.[22] Thus, PG&E appropriately requests to adjust its rate base for 100 percent of the $8.2 million pre-tax-loss-on-sale according to the "percentage allocation rule" for a depreciable asset.

We affirm PG&E's proposal for the rate base to be reduced by the amount of the historical cost less depreciated value of the assets at the close of sale.[23] We further authorize PG&E to credit the net book value combined with the transfer payment and the transaction closing costs—totaling approximately $8.2 million—to the Utility Generation Balancing Account (UGBA) and to include this amount in PG&E's Power Charge Indifference Adjustment (PCIA)

[21] *Id.* at 4; D.06-05-041, as modified by D.06-12-043.

[22] Application at 4-5.

[23] *Id.* at 4.

for recovery from bundled and non-exempt departing load customers through the PCIA.[24]

We further approve PG&E's proposal to record a reduction in the Portfolio Allocation Balancing Account (PABA) to adjust the revenue requirement associated with the Project's retired rate base upon close of sale.[25] We likewise affirm applying the base revenue reduction in PABA to the months remaining in the respective General Rate Case periods at the close of sale.[26]

Finally, we affirm PG&E's proposal to provide the updated calculation of the loss-on-sale and tax information to the Commission through a Tier 1 advice letter following closing.[27] We find this process is consistent with comparable procedures followed in prior Commission decisions.[28] We approve PG&E's request for calculating and allocating the loss-on-sale in this decision, with a final determination of specific amounts to be allocated to occur upon review of the Tier 1 advice letter to be filed by PG&E within 60 days after closing.[29]

7. CEQA Exemption

PG&E requests that the Commission find this proposed transaction to be categorically exempt from CEQA review since the transaction implicates repairs to existing hydroelectrical infrastructure with no expansion of the former use.[30] We find the proposed sale exempt from CEQA as proposed in the Application.

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[24] *Ibid.*

[25] *Ibid.* As PG&E notes, its 2020 and 2023 General Rate Case forecasts do not reflect the sale.

[26] *Ibid.*

[27] *Id.* at 5.

[28] *See e.g.*, D.16-10-026; D.19-10-010; D.19- 10-011; D.20-11-024; D.20-09-027.

[29] Application at 5.

[30] *Id.* at 8-9.

CEQA provides for a categorical exemption for the "the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use," including "[e]xisting facilities of both investor and publicly-owned utilities used to provide electric power."[31] Tule indicates it will repair the Project and resume former use without expansion of former use.[32]

8. Tribal Land Transfer Policy and Conservation Easement Compliance

On December 5, 2019, the Commission adopted the Tribal Land Transfer Policy (Policy), which "creates an expectation that, for any future disposition of Real Property, [PG&E] will offer tribes a right of first refusal before putting the property on the market."[33] PG&E did not apply the Policy to this sale.

In the Application, PG&E argues that, similar to PG&E's sale of the Kern Canyon Hydroelectric Project, it began its process for selling the Project (*i.e.*, RFO for sale of the Project launched in June 2018) long before the Commission adopted the Policy.[34] PG&E also argues that the Policy does not contain any requirements for sales of operational properties like the Project.[35] Under the circumstances, we find that the Policy does not apply to this sale because the Project will remain operational. We also note, regarding future

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[31] 14 Cal. Code Regs. § 15301.

[32] Application at 8.

[33] *Id.* at 10. The Commission's Tribal Land Transfer Policy is available on the Commission's website at: https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/news-and-outreach/documents/bco/tribal/final-land-transfer-policy-116.pdf/.

[34] Application at 10; D.20-09-027 at 10.

[35] Application at 10.

protection of cultural resources and tribal interests, the Project's FERC license requires protection of archeological and historic sites.[36]

On October 9, 2014, the Commission approved PG&E's grant of a perpetual Land Conservation Easement for the Project to the Sequoia Riverlands Trust.[37] This easement binds future owners, but PG&E, Tule, and Sequoia Riverlands Trust will also enter into a Conservation Easement Assignment and Assumption Agreement as part of this transaction "to ensure full transparency, acknowledgement, and commitment to comply with the terms of the Conservation Easement," as detailed in Exhibit F of the Amended Purchase Agreement.[38]

PG&E will also convey an approximately three-acre strip of fee property underlying an electric transmission line segment as part of the sale to support ongoing operation and maintenance of the line. The Pacific Forest and Watershed Lands Stewardship Council found that this parcel of land has no significant public interest value pursuant to the requirements of D.03-12-035.[39] Consistent with the determination, this property is not encumbered by the conservation easement.

9. Related FERC Proceedings

On February 1, 2022, PG&E and Tule jointly filed an application with FERC to transfer the plant's operating license and the title in fee to Tule.[40] PG&E

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[36] *Id.* at 11.

[37] *Id*. at 6.

[38] *Ibid.*

[39] *Ibid.* The determination appears in Advice Letter 4426-E, which the Commission approved with an effective date of October 9, 2014.

[40] Application at 11.

states it expects FERC to approve the transfer effective upon close of the transaction.[41]

10. Compliance with the Authority Granted Herein

PG&E must file a Tier 1 advice letter with the Commission's Energy Division within 60 days of the Amended Purchase Agreement closing date to implement the authority granted herein. The Tier 1 advice letter shall include the final calculation of the loss-on-sale and tax information related to the transaction.

11. Other Procedural Matters

All rulings by the assigned Commissioner and assigned Administrative Law Judge (ALJ) are affirmed herein. All motions not specifically addressed herein or previously addressed by the assigned Commissioner or assigned ALJ are denied.

12. Admission of Testimony and Exhibit into the Record

In order to fairly assess the evidentiary record, it is necessary to consider all relevant testimony and other exhibits offered for consideration by the parties. By joint motion, dated July 27, 2022, PG&E, Cal Advocates, and SCE request, pursuant to Rule 13.8, that the Commission receive PG&E's testimony and public and confidential workpapers into the record of the Application. Therefore, we mark and identify PG&E's testimony and workpapers as Exhibits PG&E-01, PG&E-02, and PG&E-03.[42] Given the necessity of PG&E's testimony and

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[41] *Ibid.*

[42] Exhibit PG&E-01: Pacific Gas and Electric Company S851 Tule Project Hydroelectric and Transmission Line Sale Prepared Testimony, dated February 24, 2022.

Footnote continued on next page.

workpapers to our assessment of the Project sale, we admit into evidence the public and confidential exhibits discussed above.

13. Confidential Treatment of Testimony and Exhibits

PG&E submitted public and confidential testimony. Pursuant to Rule 11.5 and D.06-06-066, PG&E's motion, dated August 3, 2022, requested that the Commission grant confidential treatment to PG&E's confidential workpapers provided in Exhibit PG&E-02.

PG&E's confidential workpapers constitute confidential market sensitive procurement data and information covered in the confidentiality matrix contained in D.06-06-066. We therefore grant confidential treatment of and seal, as detailed in the ordering paragraphs herein, Exhibit PG&E-02. The exhibit placed under seal shall remain under seal for the applicable period of time set forth in the confidentiality matrix in D.06-06-066.

14. Comments on Proposed Decision

The proposed decision of ALJ Brian Korpics in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure.

Comments were filed on __________, and reply comments were filed on _____________ by ________________.

Exhibit PG&E-02: Pacific Gas and Electric Company S851 Tule Project Hydroelectric and Transmission Line Sale Confidential Workpapers Supporting Prepared Testimony Chapter 2, dated February 24, 2022.

Exhibit PG&E-03: Pacific Gas and Electric Company S851 Tule Project Hydroelectric and Transmission Line Sale Public Workpapers Supporting Tule 851 Prepared Testimony, dated February 24, 2022.

15. Assignment of Proceeding

John Reynolds is the assigned Commissioner and Brian Korpics is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The Project includes a 6.4 MW powerhouse, three diversions, approximately four miles of water conveyance, a 70 kV switchyard, approximately four miles of 12 kV electric line connecting to a pump at the hydroelectric project headworks, and the 15-mile Tule-Springville 70 kV transmission line.
2. The Project suffered fire damage in 2017.
3. The Project can be repaired to restore it to its former operation.
4. The Project has an active FERC license (Project 1333) valid through July 31, 2033.
5. PG&E solicited bids for the sale of the Project through an RFO conducted in June 2018.
6. During the RFO process, 13 organizations submitted indicative proposals.
7. On December 1, 2021, PG&E and Tule executed an Amended Purchase Agreement, which PG&E and Tule later amended on January 26, 2022.
8. The negotiated sale price of the Project is $5.2 million, which is a good faith value.
9. The total historical cost of the Project is $21.0 million as of January 31, 2022.
10. The net book value of the Project is $2.7 million.
11. The total value of the transaction represents a $8.2 million loss to PG&E customers.
12. Sale of the Project is the least-cost option for PG&E's customers, when considering alternatives to repair or decommission the plant.

13. Tule intends to repair the Project and operate it consistent with former operations prior to the fire in 2017.

14. The Tule Hydroelectric Project is useful but not necessary to PG&E customers.

15. PG&E's bundled and non-exempt departing load customers received a benefit from operation of the Project.

16. The allocation rules per D.06-05-041, as modified by D.06-12-043, apply to the ratemaking treatment of this transaction.

17. The Sequoia Riverlands Trust currently manages the 43 acres of land on the Project under the Land Conservation Commitment.

18. The approximately 3-acre parcel included in the sale to support ongoing operation and maintenance of a segment of electric transmission line is not encumbered by the Conservation Easement.

19. The Sequoia Riverlands Trust will continue to manage the Project's 43 acres of land under the Land Conservation Commitment after the sale to Tule.

20. The Land Conservation Commitment runs with the title of the 43 acres of land associated with the Project.

21. The cultural resources of the Project, including any archaeological and historic sites discovered, are protected as required by the Project's FERC license.

22. The Commission adopted the Tribal Land Transfer Policy on December 5, 2019.

23. On February 1, 2022, PG&E and Tule jointly filed an application with FERC to transfer the plant's operating license and the title in fee to Tule.

Conclusions of Law

1. The Amended Purchase Agreement meets the requirements of Section 851.

2. The Commission should authorize the sale of the Project pursuant to Section 851.

3. The proposed sale of the Project is categorically exempt under CEQA.

4. The Commission's Tribal Land Transfer Policy does not apply to this sale because the Project will remain operational.

5. The Project is a depreciable asset and 100 percent of losses should be allocated to ratepayers.

6. PG&E should credit the net book value combined with the transfer payment and the transaction closing costs—totaling approximately $8.2 million—to the UGBA and include this amount in PG&E's PCIA for recovery from bundled and non-exempt departing load customers.

7. PG&E should record a reduction in the PABA to adjust the revenue requirement associated with the Project's retired rate base upon close of sale.

8. Within 60 days after the closing date of the Amended Purchase Agreement, PG&E should submit the final calculation of the loss-on-sale and tax information to the Commission's Energy Division through a Tier 1 advice letter.

9. Exhibits PG&E-01, PG&E-02, and PG&E-03 should be admitted into the evidentiary record.

10. It is reasonable to grant confidential treatment of Exhibit PG&E-02.

11. All rulings of the assigned Commissioner and the assigned ALJ should be affirmed herein, and all motions not specifically addressed herein or previously addressed by the assigned Commissioner or assigned ALJ should be denied.

12. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. Pursuant to Public Utilities Code Section 851, the Commission authorizes Pacific Gas and Electric Company to enter into the amended Purchase and Sale Agreement, attached as Attachment A to this Application, with Tule Hydro LLC.
2. Within 60 days after the closing date of the amended Purchase and Sale Agreement, Pacific Gas and Electric Company shall submit the closing financial information to the California Public Utilities Commission's Energy Division as a Tier 1 advice letter. The financial information shall consist of the final calculation of the loss-on-sale and tax information related to the transaction.
3. Pacific Gas and Electric Company (PG&E) shall credit the net book value combined with the transfer payment and the transaction closing costs to the Utility Generation Balancing Account and include this amount in PG&E's Power Charge Indifference Adjustment for recovery from bundled and non-exempt departing load customers.
4. Pacific Gas and Electric Company shall record a reduction in the Portfolio Allocation Balancing Account to adjust the revenue requirement associated with the retired rate base upon close of sale.
5. All rulings of the assigned Commissioner and the assigned Administrative Law Judge are affirmed herein, and all motions not specifically addressed herein or previously addressed by the assigned Commissioner or Administrative Law Judge are denied.
6. Application 22-02-010 is closed.

This order is effective today.

Dated ______________________________, at San Francisco, California.