

ALJ/CEK/jnf

PROPOSED DECISION

Agenda ID #18853 (Rev. 1)

Ratesetting

11/19/2020 Item #5

Decision **PROPOSED DECISION OF ALJ KERSTEN** (Mailed 10/12/2020)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric
Company (U39E) for Commission
Approval Under Public Utilities Code
Section 851 to Sell the Chili Bar
Hydroelectric Project to Sacramento
Municipal Utility District.

Application 20-03-015

**DECISION AUTHORIZING PACIFIC GAS AND ELECTRIC COMPANY SALE
OF CHILI BAR HYDROELECTRIC PROJECT AND ASSOCIATED
PROPERTY TO SACRAMENTO MUNICIPAL UTILITY DISTRICT**

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**DECISION AUTHORIZING PACIFIC GAS AND ELECTRIC COMPANY
SALE OF CHILI BAR HYDROELECTRIC PROJECT AND ASSOCIATED
PROPERTY TO SACRAMENTO MUNICIPAL UTILITY DISTRICT**

Summary

This decision grants Pacific Gas and Electric Company's (PG&E's) application to sell the Chili Bar Hydroelectric Project and associated property to the Sacramento Municipal Utility District. The sale of this hydroelectric project is authorized by statute and is in the public interest. Further, PG&E's proposed approach to ratemaking is approved. There will be no adverse environmental impact as a result of the sale. This proceeding is closed.

1. Background

Pursuant to the Public Utilities (Pub. Util.) Code Section (§) 851¹ and Articles 2, 3, and 7 of the Commission's Rule of Practice and Procedure, PG&E filed an application on March 27, 2019, requesting that the Commission authorize the sale by PG&E of the Chili Bar Hydroelectric Project (Chile Bar or Project) and associated property to the Sacramento Municipal Utility District (SMUD).

The Project generally consists of a dam, reservoir, intake, penstock, hydroelectric powerhouse building with a single 7-megawatt (MW) turbine-generator unit, and a 21-kilovolt (kV) switchyard. The Project occupies approximately 205 acres of land (property) owned by PG&E. The property is encumbered by a Conservation Easement (CE) held by the Mother Lode Land Trust (MLLT). All of PG&E's current obligations under the CE will be transferred to SMUD under the terms of the Purchase and Sale Agreement (PSA), dated February 12, 2020.

¹ Unless otherwise stated, all code section references are to the Public Utilities Code.

PG&E further requests that the Commission approve the requested ratemaking treatment as follows:

- Rate base and CWIP (Construction Work in Progress) will be reduced by the amount of the historical cost less depreciated value and the net sale proceeds at the time the sale closes. The net sales proceeds will be distributed in accordance with the Commission's policy for the allocation of gains (losses) from the sale of utility assets adopted in the Commission's Gain on Sale of Utility Assets Decision (D.) 06-05-041, as modified by D.06-12-043.²
- The loss on the sale (approximately \$10.5 million) will be credited to the Portfolio Allocation Balancing Account (PABA) as authorized utility-owned generation revenue requirement. The authorized revenue requirement for UOG (Utility-Owned Generation) resources are included in the Power Charge Indifference Adjustment (PCIA) and recovered from bundled and non-exempt departing load customers through the PCIA, as affirmed by the PCIA Order Instituting Rulemaking (OIR) D.18-10-019.
- The sale was not reflected in the 2020 GRC forecast. PG&E proposes to adjust the revenue requirement associated with the Project's retired rate base and associated operating and maintenance (O&M) upon close of the sale.³

PG&E's primary reasons for selling the Project are that it will reduce costs to PG&E's customers compared to other identified alternatives, the Project is relatively isolated from PG&E's other hydro projects, and Chili Bar is not a flexible generation project due to its heavy reliance on SMUD's upstream White

² See Application at 3, footnote 3. This ratemaking treatment was applied to PG&E's recent sales of Merced Falls Hydroelectric Sale to Merced Irrigation District approved in D.16-10-026, Narrows Hydroelectric Project Sale to Yuba Water Agency approved in D.19-10-010 and the Deer Creek Hydroelectric Project Sale to Nevada Irrigation District approved in D.19-10-011.

³ Application at 3.

Rock Powerhouse on a daily basis. Removal of the Project from PG&E's UOG portfolio will help address the reduced needs of PG&E's bundled customers for non-flexible generation.⁴

SMUD's primary reasons for purchasing the Project are that SMUD already owns and operates hydro facilities directly upstream of the Project, and the sale will allow SMUD to optimize water utilization and power production among its projects. SMUD has indicated to PG&E that acquisition of the Project will enable it to achieve efficiencies and economies of scale with its other hydroelectric and water conveyance facilities which are in the immediate vicinity of the Project.⁵

Based on an assessment of the original cost, book value, and purchase price and tax effect, and appraised value of \$9.4 million as of December 31, 2019, by Bodington & Company,⁶ the PG&E/SMUD negotiated sale price is \$10.4 million. Transactions costs, primarily estimated electrical interconnection costs, are estimated to be approximately \$1 million. The pre-tax loss on sale is estimated to be \$10.5 million; and the after-tax loss-on sale is estimated to be \$7.6 million.

PG&E maintains that the proposed transaction complies with the requirements of PG&E's LCC (Land Conservation Commitment) as defined in D.03-12-035.⁷ The Commission approved PG&E's grant of a perpetual CE (included as Attachment D to the Application) to the MLLT in accordance with

⁴ *Ibid.* at 14-15.

⁵ *Ibid.* at 15.

⁶ Bodington & Company is a brokerage firm specializing in the financing, selling, purchasing, restructuring, and appraising of electric generation facilities.

⁷ Application at 7.

the LCC on February 6, 2018. The CE, which ensures the permanent protection of the Beneficial Public Values, Informal Uses of, and Public Access to the Property, is addressed in the PSA, including a full description and acknowledgement of the requirements in Section 2.5.

On December 5, 2019, the Commission adopted a policy titled, “Investor-Owned Utility (IOU) Real Property – Land Disposition – First Right of Refusal for Disposition of Real Property Within the Ancestral Territories of California Native American Tribes” (Policy). The Policy “creates the expectation that, for any future disposition of Real Property, the IOU will offer Tribes a right of first refusal before putting the property on the market.”⁸ “PG&E and SMUD initiated discussions regarding the purchase and sale of the Project in August 2017, and a Term Sheet was executed on December 1, 2017; therefore PG&E did not contact the Tribe(s) whose ancestral territory surrounds the Project for the specific purpose to solicit offers to purchase the property as the Policy had not yet been adopted.”⁹ The cultural resources of the Project are managed under the Historic Properties Management Plan (HPMP), as required by the FERC license. Implementation of the HMPP, like all other FERC license conditions, will transfer with the Project.

On April 27, 2020, American Whitewater, American River Recreation Association, California Outdoors, California Sportfishing Protection Alliance, Foothill Conservancy, Friends of the River, Hilde Schweitzer, Planning and Conservation League, and Theresa Simsiman (Movants) filed a motion for party

⁸ *Ibid.* at 9.

⁹ *Ibid.* at 10.

status and the assigned Administrative Law Judge (ALJ) granted this motion via email ruling on April 28, 2020.

On April 30, 2020, the ALJ issued an email ruling that scheduled a telephonic prehearing conference (PHC) on June 3, 2020.

On May 1, 2020, the Public Advocates Office of the California Public Utilities Commission (Cal Advocates) filed a motion for party status and the assigned ALJ granted this motion via email ruling on May 4, 2020.

On May 18, 2020, the assigned ALJ issued an email ruling seeking Pre-PHC statements and related motions. On May 29, 2020 PG&E and Cal Advocates filed a Joint Prehearing Statement and American Whitewater et al (Whitewater) filed its own Prehearing Statement.

On June 3, 2020, a telephonic PHC was held to determine the parties, positions of the parties, issues, and other procedural matters. On June 18, 2020, an Assigned Commissioner's Scoping Memo and Ruling (Scoping Memo) was issued addressing the scope of the proceeding and other procedural matters, and establishing the procedural schedule. The Scoping Memo directed that the parties meet and confer on an unresolved dispute related to recreational access to the Chili Bar Hydroelectric Project.¹⁰

On July 31, 2020, American Whitewater, Cal Advocates, and PG&E (Parties) filed a joint status report on the parties' meet and confer process. Among other things, Parties reported that Whitewater and PG&E participated in four meet and confer sessions on the topic of Beneficial Public Value of outdoor recreation at the Chili Bar Project and informally exchanged information via email. However, Whitewater and PG&E were unable to reach a "workable

¹⁰ Scoping Memo OP 5 at 14.

understanding” of the issues in their dispute and what remedies, if any, are appropriate in the proceeding. Parties stated that they expected to address concerns and proposed remedies, in Opening and Reply Briefs, scheduled for August 24, 2020 and September 14, 2020. In this same joint status report, Parties indicated that the discovery process was complete for this proceeding.

On August 24, 2020 and September 14, 2020, PG&E and American Whitewater filed Opening and Reply Briefs.

2. Jurisdiction

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

The Federal Power Act (FPA) grants exclusive jurisdiction over the licensing of non-federal hydroelectric projects to the Federal Energy Regulatory Commission (FERC)¹¹ and vests in FERC comprehensive control over the regulation of hydroelectric resources.¹²

3. Issues Before the Commission

As discussed at the PHC, the issues to be determined are:

1. Should PG&E’s proposed sale of the Project be approved, including whether the proposed sale is in the public interest (social, political, economic, environmental); and
2. Should PG&E’s ratemaking treatment of the proposed sale be approved including process of approval for calculating and allocating the loss on the sale and tax information.

¹¹ 16 U.S.C. § 797 (e). See PG&E Opening Brief at 2-3.

¹² 16 U.S.C. § 803 (a)(1).

4. American Whitewater Request for Remedies to Address Informal Uses and Related Noticing Requirements

At the PHC, American Whitewater requested that the CPUC provide additional language or an additional opportunity to review and notice if there was a proposal to restrict access to the Project in the future. More specifically, American Whitewater recommended an amendment to Section 9.2.1 (Rules and Regulations) of the CE that would add the requirement that before any rules and regulations were developed restricting access or eliminating access, that there would be a procedure for public review and comment.¹³ In later briefs on this same topic, American Whitewater also proposed two additional potential “remedies,” including an additional amendment to Section 9.2.3 (Periodic Review of Informal Uses) of the CE that would require PG&E’s successor to consult with the Grantee¹⁴ prior to any exercise of discretion to “control, limit, or exclude informal uses of the Project,” and that “PG&E’s successor shall inform the public of any proposed action to control, limit, or exclude informal uses by filing a notice on the FERC docket for the Chili Bar Project at least 30 days prior to the effective date of such action.”¹⁵

In response to this the PHC request, PG&E emphasized that the CE describes the rights that are held by the Grantor under the CE, and these rights run with the land. The CE was itself reviewed and approved by the Commission and this included the reservations of rights for the Grantor. PG&E was not required to go through any external process for approving any discretionary

¹³ PHC Transcript at 19-20.

¹⁴ PG&E or its successor SMUD is the “Grantor”; MLLT is the “Grantee.”

¹⁵ American Whitewater Opening Brief at 13.

limitations on informal uses. PG&E submitted an Advice Letter 5201-E, and the Commission issued a disposition letter for that CE. PG&E concluded that the rights are provided under the CE were reviewed and approved at that time.¹⁶

In this proceeding, upon further review of Briefs, there is no evidence that PG&E or Whitewater have exhausted consultation channels established through the existing Conservation Easement (CE) (*See* Section 9 of the CE) to document or resolve any real or perceived issues pertaining to ongoing allowed or prohibited informal uses within the Chili Bar Project. The Mother Lode Land Trust (MLLT) is charged with monitoring the property to ensure that the conservation values are being protected and the terms of the conservation easement upheld. The CE, along with its protections, is being transferred to the proposed buyer SMUD. Amending the Commission-approved CE is out of scope of this proceeding. This Decision makes no finding as to the appropriateness of PG&E's actions to declare uses prohibited or whether Whitewater has demonstrated its uses are protected informal uses under the CE. These issues will likely need to be resolved by Whitewater, SMUD and MLLT consistent with the terms of the CE.

We also take notice that FERC is currently considering Whitewater's June 8, 2020 motion to intervene in PG&E and SMUD's joint application to FERC to approve the transfer of the Project, in which Whitewater has also raised recreational access issues.¹⁷ FERC has not yet acted to date on this motion.

5. Compliance with Section 851

Section 851 provides, in relevant part, 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,

¹⁶ *Ibid.* at 18-20.

¹⁷ PG&E Opening Brief at 3.

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 order¹⁸ from the commission authorizing it to do so for qualified transactions valued [at or] above five million dollars (\$5,000,000)

The transaction includes the Chili Bar Hydroelectric Project, which PG&E has owned and operated since 1965 to provide hydroelectric power for the benefit of its customers. Chili Bar is a non-flexible generation asset due to its relative isolation from other PG&E hydro projects and heavy reliance on SMUD's upstream White Rock Powerhouse.

We also look to the value of the property to determine whether it is at or above \$5 million. PG&E's total historical cost for the Project as of December 31, 2019 is \$25.2 million.¹⁹ The net book value, which is the historical cost less depreciation value, is \$20 million.²⁰ The negotiated price is \$10.4 million and the transaction costs, primarily related to electrical interconnection, are estimated at \$1 million.²¹

Overall, the pre-tax loss-on-sale is estimated to be \$10.5 million and the after-tax loss-on-sale is estimated to be \$7.6 million as of December 31, 2019.²² The parties will adjust the pre-and post- loss-on-sale value to the book value as of the PSA closure date.²³ Therefore, the total value of the transaction represents

¹⁸ Regulated entities may utilize the advice letter process for approval of transactions valued at less than \$5 million.

¹⁹ Application at 4.

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

a loss of approximately \$7.6 million to PG&E's customers, which is above the \$5 million threshold for Commission review of the transaction pursuant to Section 851 through review by an application.

Having determined that the provisions of Section 851 apply to PG&E's transaction and this application is properly before the Commission, our inquiry primarily turns to an assessment of compliance with CEQA, and whether the project should be approved, including whether the Project is in the public interest.²⁴

6. Compliance with the California Environmental Quality Act (CEQA) (Public Resources Code Section 2100 et seq.)

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 potential, significant environmental effects of the proposed activities or projects.

Under CEQA, when a project is to be approved by more than one public agency, only one agency becomes the lead agency. The lead agency has the greatest responsibility for supervising or approving a project. (14 Cal Code Regs. §§ 15050 or 15051.) In this case, the *lead agency* is SMUD since it has primary responsibility for implementing the Project. The Commission is the *responsible agency* because it has jurisdiction to authorize the Project in consideration of the lead agency's (SMUD's) findings. SMUD has concluded that the Project is exempt under from CEQA review pursuant to the common sense exemption: "Because SMUD plans to operate the Project consistent with current operations and in full compliance with the requirements of the existing FERC licenses, it has

²⁴ Pub. Util. Code § 853.

concluded the transaction has no potential for ‘either a direct physical change in the environment or a reasonable foreseeable indirect physical change in the environment.’”²⁵ (See Notice of Exemption (NOE) or Attachment B to the Application – citing to CEQA Guidelines Sections 15061(b)(3) and 15303(d).)

In conformance with the CPUC’s *responsible agency* role, the Commission’s CEQA Unit has reviewed SMUD’s determination and agrees that the project is exempt from CEQA review.

7. Exhibits

At the PHC, the following previously circulated exhibits were marked for identification:

1. PG&E-01, Pacific Gas & Electric Company’s §851 Chili Bar Hydroelectric Project Sale, Prepared Testimony, Public Version.
2. PG&E-02, Pacific Gas & Electric Company’s §851 Chili Bar Hydroelectric Project Sale, Prepared Testimony, Confidential Version.²⁶

On September 29, 2020, the assigned ALJ issued an email ruling soliciting comments regarding entering these two exhibits into the record and for leave to enter a confidential exhibit into the record under seal. No party objected to this motion or disputed material facts in these Exhibits. Therefore, it is reasonable to enter them as listed above into the record for consideration in this decision and to grant leave to enter Exhibit No. PG&E-02, “PG&E § 851 Chile Bar Hydroelectric Project Sale, Prepared Testimony, Confidential Version” into the record under seal.

²⁵ Application at 8.

²⁶ PHC Transcript at 26-27.

8. Discussion and Analysis

Each of the issues before the Commission will be discussed in turn.

8.1. Proposed Sale of the Project and the Public Interest

The sale of the Project to SMUD is in the public interest for several reasons.²⁷

The sale of the Project to SMUD is in the public interest of customers as it is the lowest cost path forward for the Project even though the proposed sale will result in an estimated pre-tax loss of \$10.5 million from an accounting perspective. The Project is a small generating unit that is remote from other PG&E hydro projects. Because Project coordination relies heavily on SMUD's upstream White Rock Power Powerhouse and is not a flexible generation asset, there is not great value to ratepayers of PG&E retaining the project. In other words, the sale of the Project provides the most financial savings to customers when compared to PG&E retaining ownership of and operating the Project or decommissioning the Project.²⁸

The negotiated purchase price of the Project of \$10.4 million is reasonable based on the estimated fair market value provided by Bodington & Company, a brokerage firm specializing in financing selling, purchasing, and restructuring, and appraising of electric generation facilities. As of December 31, 2019, Bodington & Company estimated the fair market value of the Project to be \$9.4 million.²⁹

²⁷ See Exhibit No. PG&E-01 - "Prepared Testimony Public Version" at 1-4 through 1-5.

²⁸ Application at 3.

²⁹ *Ibid.* at 4-5.

We also find that SMUD is an appropriate owner to ensure continuation of the beneficial public values of the watershed lands that are subject to the conservation easement. Section 9 of the CE ensures that public access and informal uses shall be allowed to continue on the Property.³⁰ Although not required, PG&E, SMUD, and the easement holder MLLT are entering into an assumption and assignment agreement for the CE to ensure full transparency, acknowledgment, and commitment to the CE.³¹ Section 9 of the CE also has consultation provisions to allow reasonable access by the public to the watershed lands and Informal Uses without informal agreements to conduct such activities (Section 9.2); right for the Grantor to make reasonable rules and regulations to control, limit, or, as necessary, exclude Informal Uses and public access (Section 9.2.1), periodic review of informal uses to ensure Beneficial Public Values (Section 9.2.3); and process between the Grantor and Grantee to determine unauthorized third-party uses or activity on the subject Property (Section 9.3).

Section 851 states in part that no public utility “shall sell, lease,...or otherwise dispose of or encumber the whole or any part of...property necessary or useful in the performance of its duties to the public,...without first having secured from the Commission an order authorizing it to do so.” As an integral part of the Commission’s decision-making process in reviewing a § 851 application, the Commission may “take such action, as a condition to the transfer, as the public interest may require.”

³⁰ *Ibid.* at 11.

³¹ Application at 7.

In summary, PG&E provides substantial evidence in its application and opening testimony that the proposed sale is in the public interest. As discussed in Section 4 above, Whitewater has not proved otherwise.

8.2. Ratemaking Treatment of the Project For Allocation of Loss on Sale

We agree with PG&E's ratemaking approach for net sale proceeds since it is in accordance with the Commission's policy for allocation of gains/losses from the sale of utility assets adopted in the Commission's Gain on Sale of Utility Assets decision, D.06-05-041, as modified by D.06-12-043:³²

We also agree with PG&E that the final calculation of the loss-on-sale and tax information should be provided to the Commission in a Tier 1 advice letter submittal to the Commission's Energy Division (ED) within 60 days following closing.³³ This process is consistent with the ratemaking processes adopted in other Commission approved decisions where the gain (loss) was not yet final in PG&E sales. Examples include D.02-12-020, sale of streetlight facilities to the City of Manteca; D.16-10-026, sale of the Merced Falls Hydroelectric Project Sale to Merced Irrigation District; and the more recently approved decisions D.19-10-010 and D.19-10-011, or sales of the Narrows Hydroelectric Project Sale to Yuba City Water Agency and Deer Creek Hydroelectric Project to Nevada Irrigation District, respectively.

In the July 31, 2020 Joint Status Report, Cal Advocates and PG&E stated that they "are in agreement with the proposed ratemaking treatment, which is

³² Application at 4-6.

³³ See Application at 6, footnote 6. In its Application for Commission Approval of Pub. Util. Code 851 to sell the Kern Canyon Hydroelectric Project to Kern & Tule Hydro, LLC (A.20-02-005), PG&E requested 60 days to submit a Tier 1 advice letter that would provide a final calculation of the gain or loss on sale and tax information.

consistent with the ratemaking employed in previous asset sales and is reflected in Chapter 3 of PG&E's testimony supporting the application."³⁴ Therefore, these parties did not recommend briefing on this issue.

9. Relationship to Other Proceedings

As PG&E states, "[t]he Federal Power Act (FPA) grants exclusive jurisdiction over the licensing of non-federal hydroelectric projects to the Federal Energy Regulatory Commission (FERC), and vests in FERC comprehensive control over the regulation of hydroelectric resources."³⁵ Accordingly, PG&E and SMUD jointly filed a license transfer application with the FERC on March 25, 2020. The Commission is conducting this proceeding on the assumption that PG&E will obtain whatever FERC approval for the transaction may be required in its pending separate application/s for license renewal and asset transfer.

The FERC process involves a review of the qualifications of SMUD to hold the license and operate the project; it also ensures that PG&E consulted with relevant federal and state agencies, tribal governments, local governments, non-governmental agencies, and other interested parties.

On January 29, 2019, PG&E filed with the United States Bankruptcy Court for the Northern District of California a voluntary petition for relief under chapter 11 of the Bankruptcy Code. In its Application, PG&E asserts that the Creditors Committee raised no concerns with the proposed sale,³⁶ and PG&E subsequently exited bankruptcy.

³⁴ July 31, 2020 Joint Status Report at 2.

³⁵ PG&E Opening Brief at 2 citing 16 U.S.C. § 797(e) and § 803(a)(1).

³⁶ Application at 9.

Pub. Util. Code § 854.2 defines “change of control” events and statutory requirements that are triggered when a “change of control” event occurs. Section 854.2(b)(1)(A) defines “change of control” as an “event that triggers the application of Section 851 or 854.” PG&E requests approval in this application under § 851, which would typically trigger the “change of control provisions” of § 854.2. Section 853(b) states “[t]he commission may...exempt any public utility...from this article if it finds that the application thereof with respect to the public utility...is not necessary in the public interest.” Because the Project is small and SMUD has experience operating similar facilities, we are assured that the transfer of the Project will not disrupt SMUD’s or PG&E’s ability to ensure safe, efficient, reliable, and continuous service to its customers. Accordingly, the Commission exempts this application from the change of control requirements contained in § 854.2.

10. Schedule

At the PHC, and discussed above, parties agreed that the Commission has sufficient information (PG&E’s Application, existing testimony (*see* exhibits listed above)), for the Commission to issue an order in this proceeding. Subsequently, the matter was submitted on September 14, 2020, or the date of Reply Briefs.

11. Categorization and Need for Hearing

The preliminary determination of the proceeding in Resolution ALJ 176-3459 was ratesetting. However, there were no issues of material disputed fact in the proceeding. Therefore, the Scoping Memo determined that evidentiary hearings were not needed.

12. Comments on Proposed Decision

The Proposed Decision (PD) of ALJ Kersten 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. On November 2, 2020, PG&E and Movants filed opening comments. On November 9, 2020, PG&E filed reply comments.

In its opening comments on the PD, PG&E does not propose any substantive changes. In contrast, Movants recommend two changes to Findings of Fact (FOF) that "clarify" PG&E's and its successor's obligation to inform, consult, and in certain circumstances, obtain the consent of the MLLT prior to making changes to Informal Uses and public access to the Project that are intended to be protected in perpetuity.³⁷ Movants dispute whether Section 9.2 of the CE is adequate "on its face" to protect public access to the Project for Informal Uses against unreasonable limitations or exclusion by PG&E or its successor SMUD.³⁸ In response to the Movants' claims, PG&E points out that the Movants have failed to identify any "factual, legal, or technical errors" in the PD, and according to CPUC rules, their comments should be given no weight. PG&E maintains that Movants incorrectly characterize their desired use as an "Informal Use" despite PG&E's assertions that Movants' desired use is an "Unauthorized Third-Party" Use.³⁹ PG&E observes that Movants' proposed findings that offer a revision to FOF 11 and a new FOF are not true to the language of the CE and should be rejected.⁴⁰

In this Decision, based on comments on the PD, we correct some minor typographical errors, but do not make any further substantive changes. We do

³⁷ Movants' Opening Comments on PD at 4.

³⁸ *Ibid.*

³⁹ PG&E Reply Comments on PD at 1 quoting Whitewater Opening Comments at 9-10 and PG&E Opening Brief at 4-5.

⁴⁰ PG&E Reply Comments on PD at 2.

not consider it appropriate to change the language of the CE as Movants suggest (e.g. Section 9.2.1) because the CE speaks for itself. As stated in the body of this Decision, there is no evidence that PG&E or Movants have exhausted consultation channels established through the existing CE (*See* Section 9 of the CE) to document or resolve any real or perceived issues pertaining to ongoing allowed or prohibited informal uses within the Chili Bar Project.

The MLLT is charged with monitoring the property to ensure that the conservation values are being protected and the terms of the CE upheld. This Decision makes no finding as to the appropriateness of PG&E's actions to declare uses prohibited or whether Movants have demonstrated its uses are protected informal uses under the CE. These issues will likely need to be resolved by the Movants, SMUD and MLLT consistent with the terms of the CE.

13. Assignment of Proceeding

Marybel Batjer is the assigned Commissioner and Colette E. Kersten is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The Project generally consists of a dam, reservoir, intake, penstock, hydroelectric powerhouse building with a single 7 MW turbine-generator unit, and a 21 kV switchyard. The Project occupies approximately 205 acres of land (property) owned by PG&E.
2. The property is encumbered by a CE held by the MLLT.
3. PG&E executed the term sheet for the sale of the Project on December 1, 2017.
4. The Project is a small generating unit that is remote from other PG&E hydro projects. Because Project coordination relies heavily on SMUD's upstream

White Rock Power Powerhouse and is not a flexible generation asset, there is not great value to ratepayers of PG&E retaining the project.

5. The sale of the Project provides the most financial savings to customers when compared to PG&E retaining ownership of and operating the Project or decommissioning the Project.

6. Because the Project is small and SMUD has experience operating similar facilities, the transfer of the Project will not disrupt SMUD's or PG&E's ability to ensure safe, efficient, reliable, and continuous service to its customers.

7. The negotiated purchase price of the Project of \$10.4 million is reasonable based on the estimated fair market value of \$9.4 million provided by Bodington & Company, a brokerage firm specializing in the financing, selling, purchasing, restructuring, and appraising of electric generation facilities.

8. The proposed transaction complies with the requirements of PG&E's LCC as defined in D.03-12-035.

9. Section 9 of the CE ensures that public access and informal uses shall be allowed to continue on the Property.

10. Although not required, PG&E, SMUD, and the easement holder MLLT are entering into an assumption and assignment agreement for the CE to ensure full transparency, acknowledgment, and commitment to the CE.

11. Section 9 of the CE also has consultation provisions to allow reasonable access by the public to the watershed lands and Informal Uses without informal agreements to conduct such activities (Section 9.2); right for the Grantor to make reasonable rules and regulations to control, limit, or, as necessary, exclude Informal Uses and public access (Section 9.2.1), periodic review of informal uses

to ensure Beneficial Public Values (Section 9.2.3); and process to determine unauthorized third-party uses or activity on the subject Property (Section 9.3).

12. The MLLT is charged with monitoring the property to ensure that the conservation values are being protected and the terms of the conservation easement upheld.

13. On December 5, 2019, the Commission adopted a Policy titled, “Investor-Owned Utility (IOU) Real Property – Land Disposition – First Right of Refusal for Disposition of Real Property Within the Ancestral Territories of California Native American Tribes.”

14. PG&E and SMUD initiated discussions regarding the purchase and sale of the Project in August 2017, and a Term Sheet was executed on December 1, 2017; therefore, PG&E did not contact the Tribe(s) whose ancestral territory surrounds the Project for the specific purpose to solicit offers to purchase the property as the Policy had not yet been adopted.

15. SMUD is the lead agency of the Project for purposes of CEQA.

16. The sale of the Chili Bar Project, as represented, is categorically exempt under CEQA.

Conclusions of Law

1. The sale of the hydroelectric project is authorized pursuant to § 851.
2. The sale is in the public interest.
3. PG&E should be authorized to enter into the PSA with SMUD attached as Attachment A to its application.
4. PG&E was not required to contact the Tribe(s) whose ancestral territory surrounds the Project for the specific purpose to solicit offers to purchase the property as the Commission’s Tribal Land Transfer Policy had not yet been adopted.

5. The Commission is the responsible agency for CEQA purposes in authorizing this PSA.

6. PG&E's proposed approach to ratemaking should be approved.

7. The estimated resulting pre-tax loss from this transaction of \$10.5 million should be treated consistent with the percentage allocation rules adopted in the Commission's Gain on Sale of Utility Asset Decision (D.) 06-5-041, as modified by D.06-12-043.

8. After close of the PSA, PG&E should true-up the final financial information as of the closing of the sale and provide it to the Commission in a Tier 1 compliance advice letter filing submitted to Energy Division within 60 days following closing. The financial information should consist of the final calculation of the loss-on-sale and tax information related to the transaction.

9. The following exhibits should be entered into the record:

- a) Exhibit No. PG&E-01 - "PG&E § 851 Chili Bar Hydroelectric Project Sale Prepared Testimony Public Version."
- b) Exhibit No. PG&E-02 - "PG&E § 851 Chili Bar Hydroelectric Project Sale Prepared Testimony Confidential Version."

10. It is reasonable to grant PG&E leave to enter Exhibit No. PG&E-02, "PG&E § 851 Chili Bar Hydroelectric Project Sale Prepared Testimony, Confidential Version" into the record under seal.

11. Evidentiary hearings were not necessary.

12. All motions not yet ruled on in this proceeding should be denied.

13. Application 20-03-015 should be closed.

O R D E R**IT IS ORDERED** that:

1. Pursuant to Public Utilities Code Section 851, Pacific Gas and Electric Company is authorized to enter into the Purchase and Sale Agreement with the Sacramento Municipal Utility District attached as Attachment A to its application.
2. Pacific Gas and Electric's proposed approach to ratemaking is approved.
3. After close of the Purchase Sale Agreement, Pacific Gas and Electric Company shall true-up the final financial information as of the closing of the sale and provide it to the California Public Utilities Commission in a Tier 1 compliance advice letter filing submitted within 60 days following closing. The financial information should consist of the final calculation of the loss-on-sale and tax information related to the transaction.
4. The following exhibits are entered into the record:
 - a) Exhibit No. PG&E-01 - "PG&E § 851 Chili Bar Hydroelectric Project Sale Prepared Testimony Public Version."
 - b) Exhibit No. PG&E-02 - "PG&E § 851 Chili Bar Hydroelectric Project Sale Prepared Testimony Confidential Version."
5. Pacific Gas and Electric is granted leave to enter Exhibit No. PG&E-02, "PG&E § 851 Chili Bar Hydroelectric Project Sale Prepared Testimony, Confidential Version" into the record under seal and is granted for a period of three years from the date of this order. During the three-year period, this information shall not be publicly disclosed except on further Commission order or Administrative Law Judge ruling. If PG&E believes that it is necessary for this information to remain under seal for longer than three years, it may file a new

motion showing good cause for extending the order by no later than 30 days before the expiration of this order.

6. Evidentiary hearings are not necessary.
7. All motions not yet ruled on in this proceeding are hereby deemed denied.
8. Application 20-03-015 is closed.

This order is effective today.

Dated _____, 2020 at San Francisco, California.