Decision **DRAFT DECISION OF ALJ THORSON** (Mailed 10/9/2003)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC COMPANY (U 39 M), a California Corporation, and WILLIAM L. BRICKNER for an Order Authorizing the Sale and Conveyance of a Certain Parcel of Land in Alameda County Pursuant to the Public Utilities Code Section 851.	Application 02-12-033 (Filed December 20, 2002)

DECISION GRANTING APPROVAL UNDER PUBLIC UTILITIES CODE SECTION 851 TO CONVEY TRANSMISSION-RELATED PROPERTY

Summary

We grant the application of Pacific Gas and Electric Company (PG&E) and William L. Brickner (Brickner) for an order approving the sale of a 1.53-acre parcel of land (property) located in the City of Oakland, Alameda County. The property underlies transmission lines, and the applicants propose that PG&E will retain an easement over the property for transmission-related purposes, a condition we approve. We decline to approve or disapprove PG&E's proposed assignment of the "gain-on-sale" proceeds to shareholders. Because the property has been recorded in the utility's transmission rate base, the question of assignment involves legal and policy issues that are more appropriately addressed in a rulemaking proceeding.

Background

PG&E acquired the property in 1921, and it has been recorded on the company's books as a nondepreciable asset at the original cost and net book value of $5,670.[1] The utility's transmission lines with a 115-kilovolt capacity cross the property. One to three 100-foot lattice steel transmission towers are also located on the property (the exact number being in question until the property is surveyed). The property has been classified as a transmission asset in PG&E's transmission rate base, and the maintenance and operating costs of the property have been recovered under FERC's ratemaking procedures for PG&E's transmission services.

On September 25, 2001, Brickner (who also owns adjoining land) entered into a written agreement to purchase the property from PG&E for $40,000 (payable in full at closing), the transaction conditioned on our approval. Under the agreement, PG&E is also entitled "to reserve easements for all existing or proposed utility facilities located, or to be located, on or under the Property."[2] Because the consideration for the transmission-related property is less than

[1] The property is a 1.53-acre parcel that, prior to closing, will be surveyed and subdivided from a larger parcel owned by PG&E. The larger parcel is presently described as Alameda County Assessor's Parcel No. 048H-7524-009-00. In approving this conveyance, we also order the applicants to file the legal description for the conveyed parcel once the final legal description is ascertained.

[2] Purchase and Sale Agreement ¶ 4.2 (Sept. 25, 2001), *set forth as* Ex. A to the application.

$50,000, the transaction does not have to be specifically approved by FERC under Section 203 of the Federal Power Act.[3]

On December 20, 2002, applicants filed their application to approve the sale and conveyance of the property under Section 851 of the California Public Utilities Code. The application contains all information required by our *Rules of Practice and Procedure* including applicant information, PG&E's articles of incorporation and financial data (incorporating by reference other recent Commission filings), environmental information, property description, terms of the proposed sale, and reasons for the proposed transfer. The property is not a generation facility so the prohibition against the transfer of such facilities, set forth in Section 377 of the Public Utilities Code, does not apply.

On January 27, 2003, the Office of Ratepayer Advocates (ORA) protested the application; but ORA's protest is limited to PG&E's proposed distribution of the net "gain-on-sale" proceeds to shareholders.

Proceedings

The prehearing conference was held on February 20, 2003, and the scoping memo was issued on March 12, 2003. The scoping memo confirmed our preliminary determination of this proceeding as ratesetting. During the

[3] 16 U.S.C. § 824(b) (LEXIS through May 29, 2003). Normally, a utility proposing to dispose of an asset, such as transmission-related property that is under FERC's jurisdiction, must seek that agency's authorization under Section 203. Unless protested, an application usually results in an approval order issued by the FERC staff. *See, e.g.,* Order Authorizing Disposition of Jurisdictional Facilities, AEP Texas Central Co. & AEP Texas North Co., No. EC03-58-000, 102 Fed. Energy Reg. Comm'n Report (CCH) ¶ 62,193 (Mar. 31, 2003). The authorization usually is "without prejudice to the authority of the Commission or any other regulatory body with respect to rates, services, accounts, valuation" and other matters. *Id.*

prehearing conference, the Administrative Law Judge (ALJ) and parties agreed that the contested issues might be resolved or narrowed prior to an evidentiary hearing. The ALJ required the parties to discuss whether they could agree on the immediate conveyance of the property, thereby leaving the disposition of "gain-on-sale" proceeds as the remaining contested issue in the case. Unfortunately, the parties ultimately were unable to agree on such a procedure.

Because of stipulations and the ALJ's decisions on prehearing motions, the contested issues were considerably narrowed. No material facts remained in dispute, and an evidentiary hearing was unnecessary. The ALJ allowed the parties a final opportunity to brief all remaining legal issues, and the final briefing focused on these legal questions (paraphrased from the scoping memo):

- Should the Commission assign the "gain-on-sale" proceeds from the conveyance to shareholders or ratepayers?
- In making this decision, does the Commission apply state or federal law (principally FERC regulations concerning the Uniform System of Accounts)?
- What is PG&E's authority for its argument that FERC requires that "gain-on-sale" proceeds from transmission-related property be assigned to shareholders?

Bankruptcy Proceedings

As a preliminary matter, we must determine whether PG&E has authority to transfer the property. The utility is the debtor and debtor-in-possession in a Chapter 11 proceeding brought under the Federal Bankruptcy Act now pending before the United States Bankruptcy Court.[4] The Bankruptcy Court has entered a comprehensive order authorizing PG&E to sell certain types of property,

[4] *In re* Pacific Gas and Electric Co., No. 01-30923 DM (Bankr. D. Cal. filed April 6, 2001).

including the property subject to this application, without further order of the Bankruptcy Court.[5] Subject to our approval under Section 851, PG&E has the requisite authority of the Bankruptcy Court to make the proposed conveyance.

California Environmental Quality Act (CEQA)

In their application, the applicants indicated they do not believe the proposed transaction is subject to the CEQA. We construe this argument to be a motion under our Rule 17.2 for determination of the applicability of CEQA. We have reviewed the application and other information submitted by PG&E to determine whether CEQA applies to this proposed conveyance.

CEQA applies to a "project" or action "which has the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change . . . [and involves] the issuance to a person of a lease, permit, license, certificate, or entitlement for use by one or more public agencies."[6] If an application does involve a project under CEQA, our Rule 17 imposes other procedures and requirements on the applicant.

We have previously held that a change in ownership may give rise to foreseeable indirect physical changes to the environment; but, absent substantial

[5] Order Granting PG&E's Motion for Authority (1) to Sell (Free and Clear of a Specified Lien), Donate, Lease, License or Otherwise Encumber Its Real and Personal Property, and (2) to Enter into Lease, License and Permit Agreements for the Use of Third-Party Property, in Each Case Within Specified Parameters (Oct. 15, 2001).

[6] CEQA Guidelines, CAL. CODE REGS. tit. 14, § 15378(a) (2003).

evidence of such indirect changes, the application for approval of the ownership change does not involve a project within the meaning of CEQA.[7]

To investigate this matter even further, the ALJ required the applicants to respond to a series of questions about current and proposed environmental conditions on the property. As a result of verified answers to these questions, the record discloses that the property is zoned by the City of Oakland as R-30 (One-Family Residential), S-10 (Scenic Route), S-11 (Site Development and Design Review), and S-145 (Expedited Design and Bulk Review Guidelines for Fire Damage Area). PG&E's transmission towers and lines are permitted under Section 17.16.050.A of the R-30 zoning ordinance. PG&E intends to continue the same transmission-related functions on its retained easement. Brickner may build a driveway on part of the acquired property. PG&E has no knowledge or information concerning the presence of any species listed as threatened or endangered under federal or California law or of the habitat of such species.[8]

Based on this information, we do not believe there is any substantial evidence of any potential direct or indirect change to the environment as the result of our approval of this application. As a result, we conclude that our approval of the application is not a project as defined by CEQA. Even if an indirect environmental change might result as a consequence of our approval, we

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[7] *See* Decision (D.) 98-02-026, 1998 Cal. PUC LEXIS 1024 (1998); D.97-07-019, 1997 Cal. PUC LEXIS 584 (1997). *Cf.* Northeast Utilities Service Co., 56 Fed. Energy Reg. Comm'n Report (CCH) ¶ 61,269 (1991) (approval of disposition of facilities under § 203 of the Federal Power Act does not generally constitute major federal action significantly affecting quality of human environment).

[8] *See* Response of Pacific Gas and Electric Company to Administrative Law Judge's Request for Further Information (Feb. 18, 2003).

believe the project would be exempt under CEQA.[9] We conclude that CEQA review of the application is not required.

Section 851 Criteria

Section 851 provides that no public utility shall sell "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, . . . " without securing our permission. We have generally required a public utility applicant to demonstrate that a proposed transfer would not be adverse to the public interest.[10] We have continually asserted our Section 851 jurisdiction over transmission facilities (such as the property here) that are subject to FERC's jurisdiction—even when FERC's approval under Section 203 of the Federal Power Act must also be secured.[11]

The applicants recite specific benefits to the public interest as the result of the proposed conveyance. By reserving an easement for transmission purposes, PG&E can continue and maintain the existing transmission line and make future modifications or improvements as necessary. If the conveyance is approved, the property can be removed from the transmission rate base; and PG&E will avoid ongoing tax payments, maintenance expenses, and potential liability for accidents on the property. We are convinced that the proposed conveyance will

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[9] *See* CEQA Guidelines, CAL. CODE REGS. tit. 14, § 15061(b)(4) (2003) (a project is exempt where "it can be seen with certainty that there is no possibility that the activity . . . may have a significant effect on the environment . . .").

[10] *See, e.g.,* D.02-10-022 , 2002 Cal. PUC LEXIS 646 (2002); *see also Hempy v. Public Utilities Comm'n,* (1961) 56 Cal. 2d 214, 217 (all the Commission is concerned with is whether the proposed transfer will be injurious to the rights of the public).

[11] *See* D.99-10-066, 1999 Cal. PUC LEXIS 716 (1999).

result in a more efficient utilization of utility assets and is not injurious to public rights.

The sales price of $40,000 is based on the appraisal of J. Kaeuper & Company, commercial real estate appraisers and consultants located in San Francisco.[12] The appraisal, performed in August 2000, was based on a sales comparison methodology. The appraisal concluded that the market value, given uncertainties related to the lot-line adjustment and "remnant parcel status," was $40,000. The sales price has not been contested in this proceeding, and we believe it is reasonable consideration for property appurtenant to a major transmission line and over which easements are reserved.

Assignment of "Gain-on-Sale" Proceeds

The only significant contested question in the proceeding is whether PG&E's shareholders or ratepayers should benefit from the estimated $20,342 in "gain-on-sale" proceeds. In cases of transmission-related property, a threshold issue is whether we have jurisdiction to make this allocation or assignment of proceeds. If we do have jurisdiction, we then must decide whether we apply federal or state law to make this allocation and determine what the applicable federal or state decision rule requires in terms of allocating "gain-on-sale" proceeds. Because we anticipate commencing a rulemaking proceeding to address this issue, we defer and do not decide these jurisdictional and allocation issues today. Since these issues have been well briefed in this proceeding, we do continue to discuss them here in order to inform participants in the anticipated rulemaking proceeding.

[12] *See* Ex. E to application.

Property in FERC-Jurisdictional Rate Base

PG&E argues that the property is not within PG&E's rate base for any ratemaking purpose over which we have jurisdiction. As the parties have stipulated, the property has been classified as a transmission asset and included in PG&E's transmission rate base since the land was acquired in 1921. The property's maintenance and operating costs have been recovered through FERC's ratemaking proceedings (tariff filings and rate cases) involving PG&E's transmission services. PG&E argues that, under the Federal Power Act, FERC has plenary authority, including ratemaking authority, over the transmission of electric energy in interstate commerce.[13]

Uniform System of Accounts (USOA)

FERC also has regulatory authority to promulgate rules for the accounting and reporting of proceeds from the disposition of transmission-related and other jurisdictional assets, including those transactions that do not exceed Section 203's $50,000 approval threshold.[14] These accounting rules are set forth in the comprehensive USOA, initially developed by the Federal Power Commission (FERC's predecessor) in the 1930s in order to provide a consistent,

[13] 16 U.S.C. § 824 (LEXIS through May 29, 2003); *see also Federal Power Comm'n v. Florida Power & Light Co.*, 404 U.S. 453 (1972) (utility engaged in interstate commerce when its local transmission lines connected with other lines distributing electricity out-of-state).

[14] 16 U.S.C. § 824(b) (LEXIS through May 29, 2003).

rational accounting system to assist regulating agencies and to prevent accounting abuses that preceded the adoption of the uniform system.[15]

This system of accounts for public utilities and licensees subject to the Federal Power Act is set forth at 18 C.F.R. Part 101 (2003). Almost 1,000 specific accounts are systematically organized in the major subdivisions of the USOA: balance sheet chart of accounts, electric plant chart of accounts, income chart of accounts, and operation and maintenance expense chart of accounts. The USOA also provides detailed explanatory information and FERC's occasional orders adopting or modifying portions of the accounts often include interpretative provisions.

FERC's chief accountant ensures compliance with the Commission's accounting regulations, and accounting pursuant to the USOA does have ratemaking implications. The uniform accounting system, however, does not dictate even FERC's own ratemaking policies; and the courts have recognized this distinction.[16]

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[15] *See* 16 U.S.C. § 825(a) (LEXIS through May 29, 2003) (FERC authorized to "determine by order the accounts in which particular outlays and receipts shall be entered, charged, or credited.").

[16] Public Service Comm'n of the State of New York v. FERC, 813 F.2d 448, 456 n.12 (D.C. Cir. 1987) ("We are unpersuaded by petitioner's argument that the inclusion of a category for institutional advertising within the Commission's System of Accounts requires allowance for such expenses here. . . . In any event, the Commission's accounting system alone cannot be said to dictate the Commission's ratemaking policies.); *Alabama-Tennessee Natural Gas Co. v. Federal Power Comm'n*, 359 F.2d 318, 336 (5th Cir. 1966) (distinction between tax accounting and ratemaking; "The short answer is that accounting for tax purposes and even the Commission's present Uniform System of Accounts may be valuable tools, but they cannot dictate ratemaking policies."); *cf. Town of Norwood v. FERC*, 53 F.3d 377, 379 (D.C. Cir. 1995) ("the accounting approach does not necessarily dictate the ratemaking approach, and the Commission did not hold

Footnote continued on next page

Pursuant to Public Utilities Code Section 793, we adopted FERC's USOA in 1970 to provide consistency with FERC accounting practices. We indicated at the time "that the Commission does not commit itself to approve or accept any item set out in any account for the purpose of fixing rates or determining other matters which may come before it."[17] As FERC has changed its accounting requirements, we also have adopted those changes.[18] We have consistently maintained, however, "that the accounting provisions contained [in the Uniform System of Accounts] are not controlling as to the ratemaking policies which this Commission may determine to be reasonable and necessary."[19]

"Gain-on-Sale" Proceeds Assigned to "Below-the-Line" Account

In this particular case, PG&E argues that the USOA requires that the "gain-on-sale" proceeds be assigned to shareholders. PG&E indicates that the proceeds from the sale of the property, a nondepreciable transmission-related asset, will be credited to FERC Account 421.1, "Other Income and Deductions."

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itself to be bound by FAS [Financial Accounting Standards] 106 for ratemaking purposes."); *Interstate Commerce Comm'n* v. *Goodrich Transit Co.*, 224 U.S. 194, 211 (1912) ("The object of requiring such accounts to be kept in a uniform way and to be open to the inspection of the Commission is not to enable it to regulate the affairs of the corporations not within its jurisdiction, but to be informed concerning the business methods of the corporations subject to the act that it may properly regulate such matters as are really within its jurisdiction.").

[17] D.42068, 48 CPUC 253, 257 (1948).

[18] *See, e.g.*, D.87-07-067, 25 CPUC2d 7 (1987).

[19] D.87-07-067, 25 CPUC2d at 8. *See also* D.89-12-057 at 129, 1989 Cal. LEXIS 687 (1989).

PG&E argues that because Account 421.1 is part of the "Other Income and Deductions" portion of the USOA, it is a "below-the-line" account assignable to shareholders rather than ratepayers.

While FERC and the courts have repeatedly indicated that accounting should not slavishly dictate rate treatment, FERC likely would agree with PG&E that the proceeds from this sale should be assigned to shareholders. In prior decisions, FERC has determined that "any gain on the disposition of utility property is recorded below the line by the seller and inures to the benefit of utility *shareholders.*"[20] While noting that results may differ in individual cases, FERC has also indicated that "[c]osts included in 'above-the-line' accounts are generally presumed to be recoverable in rates, while costs included in 'below-the-line' accounts are generally presumed not to be recoverable in rates."[21]

We would likely disagree with this assignment of gain-on-sale proceeds if the decision were ours to render. When property has been in the rate base for extended period of time, as here, we have often assigned the gain-on-sale proceeds to the ratepayers. In such cases, ratepayers, through their rate payments, have supported the operational and maintenance expenses of the property and borne the risk of the investment.[22]

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[20] 46 Fed. Energy Reg. Comm'n Report (CCH) ¶ 61,006, 61,031 (1989) (emphasis in original).

[21] 84 Fed. Energy Reg. Comm'n Report (CCH) ¶ 61,156, 61,855 n.26 (1998).

[22] *See, e.g.,* D.85-11-018, 19 CPUC2d 161 (1985).

FERC Primacy Over Transmission-Related Ratemaking

What is distinctive about this case is that the USOA is being applied to transmission-related property that may be subject to FERC's jurisdiction—not to local utility property over which we unquestionably have jurisdiction. As this property is transmission-related, determinations we might make as to the allocation of proceeds from the sale of the assets might potentially interfere with FERC's transmission ratemaking authority and procedures. The converse is also true: FERC, through its adoption of the USOA, cannot prescribe accounting determinations that bind us in rate proceedings involving local utility operations.

If FERC does have jurisdiction over the "gain-on-sale" proceeds from transmission-related assets, ORA and other PG&E ratepayers would appear to have some remedies before that agency to address these allocation issues. FERC requires that PG&E report the accounting treatment of such "gain-on-sale" proceeds, at least in gross numbers, in Form 1 (p. 117), *Annual Report of Major Electric Utilities, Licensees and Others*.[23] The FERC Chief Accountant may challenge PG&E's accounting treatment or the accounting may be taken up in a rate proceeding involving PG&E's transmission rates. A ratepayer or any third party may file a complaint against PG&E with FERC under Section 306 of the Federal Power Act.[24] In such FERC proceedings, ratepayers might argue that the "gain on sale" proceeds should be divided and assigned based on the time the property was within the rate base subject to our jurisdiction as compared to the time the property has been within the FERC-administered transmission rate base.

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[23] *See* 18 C.F.R. §§ 141.1, 385.2011 (2003).

[24] 16 U.S.C. § 825e (LEXIS through May 29, 2003).

The stipulated facts here, however, do not address this issue; and, as we have previously mentioned, we do not decide these jurisdictional and "gain-on-sale" allocation issues here. We do, however, encourage the reopening of this proceeding to apply the results of our anticipated rulemaking on Section 851 issues to the questions deferred in this proceeding.

Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on October 29, 2003, and reply comments were filed on November 3, 2003. Comments and reply comments were filed by PG&E and ORA.

PG&E comments that, while the final outcome proposed by the draft decision is correct, the draft decision inappropriately discusses issues and authorities not raised by the parties and makes incorrect statements concerning the risks of investment and ownership. PG&E indicates that the discussion of "gain-on-sale" allocations constitutes an advisory opinion disfavored by the Commission.

We have issued many decisions in the past on the allocation of gain from transactions subject to Section 851, and they have not always been consistent. A rulemaking proceeding will be beneficial because it will allow us to consider allocation outcomes in the diversity of circumstances in which they occur. The allocation issues in this proceeding were well briefed by the parties, and the discussion in these issues in the draft opinion provides useful observations on transmission-related property that will assist in our anticipated rulemaking proceeding. The draft decision's discussion of these issues is not an advisory

opinion because these allocation questions were at issue in this proceeding. We have only deferred the final decision on these questions.

PG&E also requests a correction of the findings of fact stipulated to by the parties in the proceeding. This suggested correction concerns the estimated 2002 revenue requirement for the property, and PG&E indicates that the correction does not constitute a substantial change to the application or alter the result. ORA objects to this request, indicating that PG&E seeks to offer new evidence without complying with Commission rules. Given this objection, the stipulated finding of facts, adopted by the draft decision, will not be changed.

ORA filed comments indicating that the draft decision, in its findings of fact, inaccurately misstates one of the facts stipulated to by the parties. The discrepancy between the use of the terms "land" or "property" in findings of facts 7 and 16 relate to ORA's argument that the transfer results in a divided property estate with the transferred portion no longer being transmission-related property. This argument was rejected by the Administrative Law Judge in an earlier ruling. The factual findings and the conclusion of law that the property is transmission-related will not be disturbed.

ORA also indicates that the administrative record does not support the deferral of the "gain-on-sale" allocation issue to another proceeding that, at present, has not commenced. We have deferred such allocation issues in the past, as ORA's recitation of instances confirms. We see no error in deferring this issue again to a rulemaking proceeding that we contemplate initiating.

Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and John E. Thorson is the assigned ALJ in this proceeding.

Findings of Fact

1. Findings of Fact 2 to 20, *below*, are stipulated to by the applicants and ORA; and we find them to be supported by the record. We also reach Findings of Fact 22 to 26 based on our own review of the record.

2. By A.02-12-033 (filed December 20, 2002), PG&E seeks authority under Public Utilities Code Section 851 to sell and transfer a certain parcel of land to William L. Brickner.

3. The property that is subject of A.02-12-033 consists of approximately 1.53 acres of land in the City of Oakland, Alameda County (property).

4. Brickner and PG&E executed a Purchase and Sale Agreement dated September 25, 2001.

5. The purchase price as set forth in the Purchase and Sale Agreement is forty thousand dollars ($40,000).

6. PG&E originally acquired the property as a corridor for electric transmission lines.

7. The property contains transmission lines and transmission towers.

8. PG&E will retain easements for the electric transmission lines and transmission towers.

9. PG&E states in the application that the property consists only of nondepreciable land with an estimated 2002 revenue requirement, including taxes, franchise requirements and provision for uncollected amounts, of $6,648 (based on estimated taxes of $842, estimated maintenance costs of $5,000, and PG&E's authorized cost of capital for transmission assets for 2001 of 11.22% on equity and 9.12% on rate base).

10. The property is classified as a transmission asset in PG&E's transmission rate base.

11. Maintenance and operating costs related to the property have been recovered through FERC ratemaking for transmission service in the Company's transmission owner rate cases.

12. PG&E originally acquired the property on October 4, 1921.

13. The total original cost and net book value of the nondepreciable property is $5,670.

14. The property was recorded in the rate base in 1921.

15. The property has not been taken out of the rate base.

16. The property is nondepreciable land only.

17. Ratepayers have not contributed to the initial acquisition of the property.

18. PG&E has not recovered the initial cost of the property from ratepayers through depreciation expense.

19. After the sale, PG&E's electric transmission rate base will be reduced by the original cost of the property, $5,670.

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

21. PG&E provides an analysis of how it derives the after-tax gain of $20,342 in Exhibit G of the application.

22. Applicants' application provides the information required by Rules 15(a), 15(b), 16, 17, 17.1, 35, and 36 of our *Rules of Practice and Procedure.*

23. The record contains no substantial evidence that our approval of the proposed conveyance will result in any direct or indirect change to the environment.

24. By reserving an easement for transmission purposes, PG&E can continue to maintain the existing transmission line and make any necessary future modifications or improvements.

25. The fair market value of the property at the time of the Purchase and Sale Agreement was $40,000.

26. PG&E has represented that its rights under the reserved easement, in addition to any rights it may have under the common law of servitudes, are sufficient for all foreseeable future needs. The utility further represents that any cost due to any expansion to the easement which is not funded by new customers pursuant to tariffs will be borne by PG&E and will not be reflected in rates.

Conclusions of Law

1. The applicants have satisfied all requirements of our *Rules of Practice and Procedure.*

2. An evidentiary hearing is not required.

3. Public Utilities Code Section 377, prohibiting the disposition of certain utility generation facilities, does not apply to this transaction.

4. PG&E is authorized by the Bankruptcy Court to convey the property.

5. Our approval of the proposed conveyance does not constitute a project under the CEQA and no further environmental review is required under that statute.

6. Our approval of the proposed conveyance is not injurious to public rights or the public interest.

7. PG&E will receive full, fair and timely consideration for the sale of the property.

8. The requirements of Public Utilities Code Section 851 are satisfied.

9. We do not decide whether we have jurisdiction to assign the "gain-on-sale" proceeds from this sale of transmission-related property to either shareholders or ratepayers, and we make no assignment of the proceeds. This assignment is properly made after we have completed a rulemaking proceeding concerning "gain-on-sale" issues.

O R D E R

IT IS ORDERED that:

1. Applicants' application is approved authorizing Pacific Gas and Electric Company (PG&E) to convey the property to William L. Brickner subject to easements for public utility purposes as described in the Purchase and Sale Agreement, dated September 25, 2001, and attached to the application.

2. Within 30 days of the transfer of title, the applicants shall file by advice letter, referencing this proceeding and decision, notice of the completed transfer and a copy of the deed including the final legal description of the conveyed property.

3. PG&E shall record the proceeds from the sale in a memorandum account pending further order of the Commission.

4. Upon a party's motion or the Commission's own motion under Section 1708 of the Public Utilities Code, this proceeding may be reopened for the purposes of determining jurisdiction and assigning proceeds.

5. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.